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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 MITRE SPORTS INTERNATIONAL LIMITED,

5 Plaintiff,

6 v.

08-cv-9117 (GBD)

7 HOME BOX OFFICE, INC.,

8 Defendant.  
9 -----x

10 New York, N.Y.  
11 April 13, 2015  
12 9:45 a.m.

13 Before:

14 HON. GEORGE B. DANIELS

15 District Judge  
16 - and a jury -

17 APPEARANCES

18 CONSTANTINE CANNON, LLP

19 Attorneys for Plaintiff

20 BY: ROBERT L. BEGLEITER, ESQ.

21 LLOYD E. CONSTANTINE, ESQ.

22 ANKUR KAPOOR, ESQ.

23 JEAN KIM, ESQ.

24 DAVID SCUPP, ESQ.

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MASHA HANSFORD, ESQ.

ADAM JOSHUA PODOLL, ESQ.

Also Present: Stephanie S. Abrutyn, Esq.  
Home Box Office, Inc.

1  
2 (In open court; jury panel not present)

3 THE CLERK: Mitre Sports International Ltd. v. Home  
4 Box Office, Inc., 08-cv-9117.

5 THE COURT: I have your appearances. Thank you.

6 Let me go right to some of the issues that are before  
7 me. With regard to the designations and counter-designations,  
8 what you designated originally as designations and  
9 counter-designations, those are the designations and  
10 counter-designations. You can't change them in response. You  
11 obviously made a determination of which you thought were  
12 designations, which you thought were counter-designations, and  
13 you did that without any agreement that they were all going to  
14 be made at one time. And it's not appropriate to change it  
15 now, simply now recharacterize what you indicated were  
16 affirmative designations or counter-designations.

17 Let me go to how to check --

18 MR. CONSTANTINE: Your Honor, it's hard to hear you.

19 MR. BUTSWINKAS: Judge, I'm sorry. I just had a  
20 question on the deposition issue. I just wanted to make clear  
21 to the Court that all of the designations were done in the  
22 first instance by both sides before counter-designations, and  
23 so we've already designated them. So when you got to the  
24 counter-designations, you already had the other side's  
25 designations. You generally wouldn't want to redesignate that

F4DAMIT1ps

1 as a counter-designations as well, because you wouldn't want  
2 them identified twice.

3 THE COURT: So you already designated your  
4 designations and your counter-designations. There's no  
5 legitimate reason to say that the world changed because I  
6 issued my order.

7 MR. BUTSWINKAS: No. The designations are in the  
8 scope of the designations that came from them at the same time.

9 THE COURT: You didn't characterize them as  
10 counter-designations. You characterized them as designations.

11 MR. BUTSWINKAS: OK. I understand, your Honor.

12 THE COURT: I can't give you anything other than that.

13 With regard to Ponticelli, Ponticelli can testify, but  
14 neither her lay or expert opinion are admissible in this case.  
15 Now, if she wants to get on the stand and she wants to look at  
16 the clip and she wants to say, that's not my complete answer,  
17 and then you want to have her identify the complete segment and  
18 let her identify it as her complete answer, she can do so. But  
19 what she thinks about HBO's motives or what she thinks is going  
20 on is irrelevant. So she, as far as I'm concerned, she is  
21 strictly a fact witness, if she were called for that purpose.  
22 She is not an opinion witness. And none of her opinions are  
23 admissible in this case.

24 MR. CONSTANTINE: Thank you, your Honor.

25 THE COURT: Now, unless you want to give me some

F4DAMIT1ps

1 more -- well, let me go to the motion to quash. Plaintiffs  
2 want to call the chairman of HBO. Let's put it this way. If  
3 there's other testimony in this case from other witnesses who  
4 say -- or other witnesses who will testify who can say that  
5 they received e-mails from the chairman, then I'm not going to  
6 order the chairman to come in here just for that. So unless  
7 you tell me that the chairman has something to say, admissible  
8 evidence that other witnesses whom you anticipate will be  
9 called by either side can't say, I'm not going to order him to  
10 show up, just so you can grill him about the e-mails.

11 Yes.

12 MR. SCUPP: Your Honor, just to be very clear, we are  
13 going to ask Mr. Plepler about what he himself did.

14 THE COURT: I didn't see anything in your submission  
15 about what he did that was relevant. What did he do, other  
16 than send e-mails?

17 MR. SCUPP: He sent an e-mail instructing the  
18 president of HBO, as well as the parents who publish Children  
19 of Industry, to prominent authors in the field of public  
20 relations and the most powerful public relations --

21 THE COURT: My question is still the same. What did  
22 he do other than send even e-mail?

23 MR. SCUPP: That's what he's going to come to testify.

24 THE COURT: That's what I just said. If all you're  
25 going to have him come and testify to is that he send the

F4DAMIT1ps

1 e-mail --

2 MR. SCUPP: No, we want to know what he did other than  
3 that.

4 THE COURT: What did he do? This isn't discovery.  
5 Tell me what it is you expect him to say.

6 MR. SCUPP: We expect him to say that he publicized  
7 Children of Industry beyond the regularly scheduled broadcasts.

8 THE COURT: How?

9 MR. SCUPP: By providing the segment to individuals  
10 such as those who he sent the e-mails to.

11 THE COURT: Wait a minute. You can't just keep  
12 backdooring the e-mails. Is there anything else that you say  
13 that you have any evidence that he did that he is involved in  
14 that would be relevant evidence in this case, other than send  
15 the e-mail that was the subject of discovery?

16 MR. SCUPP: Your Honor, I think that the e-mail itself  
17 is strong circumstantial evidence. And in response to our  
18 proffer that we would have Mr. Plepler testify about what he  
19 himself did, he did not respond that he --

20 THE COURT: The people who received the e-mails, are  
21 they testifying at this trial?

22 MR. SCUPP: One will be testifying by deposition.

23 THE COURT: Is anyone testifying live?

24 MR. SCUPP: No.

25 THE COURT: Was anyone asked about this e-mail during

F4DAMIT1ps

1 the deposition?

2 MR. SCUPP: Yes.

3 THE COURT: And did that person say that he received  
4 such an e-mail?

5 MR. SCUPP: I believe he did -- he did -- he did --  
6 yes.

7 THE COURT: OK. So that person is going to say they  
8 received an e-mail. I assume they're going to testify what  
9 they did in response to receiving the e-mail.

10 MR. SCUPP: No, your Honor. It's not in the  
11 deposition testimony.

12 THE COURT: It's not in the chairman's testimony  
13 either.

14 MR. SCUPP: I'm sorry, your Honor. The chairman's  
15 testimony?

16 THE COURT: Right. He's not going to testify about  
17 what they did after they received the e-mail.

18 MR. SCUPP: We don't know.

19 THE COURT: Well, it's a little late to be saying you  
20 don't know, you want to call him just to see what he's going to  
21 say. That's not persuasive argument. Unless you can make a  
22 proffer of what relevant testimony he has to give, I'm not  
23 going to let you just drag the CEO in here just to say, I sent  
24 an e-mail. Now, if there was some relevant activity that he  
25 was involved in beyond that, I assume that that would have been

F4DAMIT1ps

1 the subject of discovery. But at this point to call him to see  
2 what he's going to say, no, that's not a sufficient proffer.

3 Mr. Begleiter?

4 MR. BEGLEITER: Yes, I have another point here. The  
5 e-mail is sent two days after Children of Industry is  
6 broadcast, and also two days after Mitre had had a discussion  
7 with counsel for HBO about the "problems" -- I'm being neutral  
8 now -- about the problems that they had.

9 THE COURT: And you intend to offer evidence in that  
10 regard?

11 MR. BEGLEITER: Absolutely. Let me just make my point  
12 and then sit down. It looks to us -- because if you take a  
13 look at his response on the motion to quash, he says he doesn't  
14 recall if he knew about the conversation. OK. That's kind of  
15 weak. And I think we ought to have the opportunity for the  
16 jury to look at it and say, look, did you double down on this,  
17 did you know about the problems and say, go ahead and get more  
18 publicity? And then they go to punitive damages.

19 THE COURT: I know, but that's a guess, that's a  
20 speculation on your part at this point. If you say you deposed  
21 him and he said he ran out the next day and did X,Y, Z and  
22 that's what you want him to come testify to, but to simply  
23 bring him in here and say you hope he's going to say something  
24 else is not, I don't think that's a sufficient basis to tell  
25 the CEO of the company to come in here because you never

F4DAMIT1ps

1     deposed him, you never indicated he had any relevant testimony  
2     to give, and you just want to drag him in here and throw him in  
3     front of the jury and make him sweat.

4             MR. BEGLEITER: Can we do an hour deposition of him in  
5     his office?

6             THE COURT: It's a little late for that. Right now I  
7     just hear pure speculation that you hope he's going to say  
8     something useful. The only thing that you proffered to me is  
9     that he sent an e-mail, and then that others received the  
10    e-mail and others took action in response to the e-mail.

11    That's totally admissible, through whatever witnesses that you  
12    want to call or whatever witnesses you depose and whatever  
13    witnesses they indicated that they had that information. But  
14    even the chairman doesn't have the non-hearsay information of  
15    what the others did in response to his sending the e-mail.

16            So unless you can give me a specific proffer of what  
17    you say he's going to say and that is going to be both relevant  
18    and admissible and also not cumulative, then, no, I'm not going  
19    to drag him in here. So if you can articulate something that  
20    is relevant, admissible, non-hearsay testimony that you're  
21    confident that he's going to give and it's not going to be  
22    cumulative of other testimony, I will consider making the CEO  
23    come down here to say that. I can't do it by simply saying,  
24    well, you hope he gets up on the stand and breaks down and  
25    confesses.



F4DAMIT1ps

1 MR. BEGLEITER: I don't expect him to confess. Even  
2 if we accept his testimony that he "doesn't recall" the  
3 conversation, I think that goes to punitive damages.

4 THE COURT: Well, where do you have that from?

5 MR. BEGLEITER: From his declaration, that he  
6 submitted in support of his motion to quash, because he  
7 "doesn't recall" about the conversation, which might have  
8 pointed out two days before that there were problems. So now  
9 if he doesn't take the stand, we lose the opportunity to ask  
10 him, hey, look, you're the CEO, you didn't know, your people  
11 didn't tell you and you didn't react to it, and instead you go  
12 ahead and double down on the publicity going to Pulitzer Prize  
13 winners and high-class public relations people? That's my  
14 point, your Honor.

15 THE COURT: As I say, you want to call him as your  
16 witness so you can impeach him.

17 MR. BEGLEITER: Absolutely, your Honor.

18 THE COURT: That's a little awkward to just say, well,  
19 the guy said he doesn't remember, so I want to call him as my  
20 witness to make him squirm and say he doesn't remember and then  
21 I can argue to the jury he's lying and saying he doesn't  
22 remember.

23 MR. BEGLEITER: I'm just saying that's incredible.

24 MR. CONSTANTINE: Your Honor, this will be the last  
25 thing we say about it: It is simply not credible that

F4DAMIT1ps

1 Mr. Plepler directed the public relations staff and the  
2 president of HBO Sports to contact three of the most powerful  
3 reporters in the world, who are his personal friends -- I heard  
4 him the other day on television saying Tom Friedman this and  
5 Tom Friedman that. So these are his personal friends. It's  
6 quite likely that he also talked to Tom, that he also talked to  
7 Samantha, and he also talked to Nick and he also talked to  
8 Steve Rubinstein, and his declaration carefully avoids that.  
9 He said, I sent this e-mail to the president of HBO Sports but  
10 I don't remember doing that, and I'm the kind of CEO who  
11 doesn't even care whether the president of HBO Sports takes my  
12 direction. It's not credible. The jury has a right to see his  
13 answers to those questions. And they have the right to know  
14 what he did himself, because it's quite likely, since he was  
15 excited about this program, that he also --

16 THE COURT: But you have no evidence that he did  
17 anything himself.

18 MR. CONSTANTINE: Well, if your Honor would allow us a  
19 30-minute deposition --

20 THE COURT: Wouldn't that have been appropriate to do  
21 during discovery, if you thought he had relevant information?

22 MR. CONSTANTINE: It would have been appropriate, when  
23 we let HBO know that we were going to call him, I believe in  
24 December, for them to say, look, he has nothing to say, if you  
25 want to take his deposition and he will aver to that, that

F4DAMIT1ps

1 would have been fine. But the motion to quash was made more  
2 than three months after we let HBO know that we were going to  
3 call him.

4 THE COURT: Well, as I say, you haven't been able to  
5 articulate any testimony that he could give that would give  
6 this jury any information that they don't already have, nor  
7 that you say that he has additional information that he's going  
8 to testify to. It seems to me that this case is -- your  
9 position right now is not that you're proving your case because  
10 the chairman ran out and told everybody about the story.  
11 That's not your case.

12 MR. CONSTANTINE: That's a part of the case.  
13 Publicity is part --

14 THE COURT: No, not that the chairman personally did  
15 that. That's not your case.

16 MR. CONSTANTINE: That is part of the case, your  
17 Honor.

18 THE COURT: You have evidence to offer that the  
19 chairman went out and personally spoke to other people about  
20 this?

21 MR. CONSTANTINE: We don't. We're going to ask him,  
22 we want to ask him that, your Honor.

23 THE COURT: But he's going to deny it. And the  
24 question aren't evidence. Answers are.

25 MR. CONSTANTINE: I don't actually believe he will

F4DAMIT1ps

1 deny it. I believe he is a truthful person and if he did what  
2 he likely would have done, which is call up his friends, then  
3 he will truthfully testify to that.

4 THE COURT: What are you saying now would be evidence  
5 of what?

6 MR. CONSTANTINE: Evidence of publicity. The essence  
7 of a libel case is publication and publicity, your Honor.

8 THE COURT: So you're hoping you have that additional  
9 publication, but you have no evidence that any such publication  
10 took place.

11 MR. CONSTANTINE: I think the evidence would come from  
12 Mr. Plepler, and I believe he will truthfully testify.

13 THE COURT: He's clear that you don't have any basis  
14 to do anything other than to -- I won't even call it  
15 speculative, I will call it to hope that he's going to give you  
16 contrary testimony to what he has provided in his affidavit.  
17 So unless, as they say, I'm fairly confident -- you talk about  
18 what you hope you can do with him, which is really to call him  
19 so you can try to impeach him. I see no facts that you have a  
20 basis to argue that you, if you have a reasonable belief that  
21 he's going to give you some additional facts other than the  
22 facts as you are now aware of them that he sent an e-mail to  
23 these people, gave them directions to distribute this, and if  
24 they in fact did distribute it, that's further evidence of your  
25 publications. If they did not distribute it, then that is not

F4DAMIT1ps

1 further evidence.

2 MR. CONSTANTINE: The reasonable belief, your Honor,  
3 is based upon the following: since the carefully and  
4 strategically worded declaration did not go into the issue of  
5 what he did beyond that -- he didn't say, I didn't do anything  
6 else; he didn't say, I didn't contact these people who are my  
7 friends myself; he didn't say any of that -- the fact that that  
8 declaration was put together by assertion is a reasonable basis  
9 to ask Mr. Plepler that one question.

10 THE COURT: You want to ask him that one question so  
11 he can deny it.

12 MR. CONSTANTINE: And I'm sure he will truthfully  
13 testify. In fact if we ask him that one question and he says,  
14 I did nothing else, then that would be the end of his  
15 testimony.

16 THE COURT: Well, as I say, on that basis I think that  
17 that's an insufficient basis to call the CEO of the company to  
18 sort of ask him and hope that he gives you the answer that you  
19 want him to give. So that's my position unless something  
20 changes in this regard. If some of the other witnesses testify  
21 that the CEO told somebody to say, come on down to me, I'll let  
22 you talk to my buddy, something like that, then I'll reconsider  
23 it. At this point there is no basis in fact for that witness  
24 to give that testimony.

25 With regard to the deposition designation, unless you

F4DAMIT1ps

1 can -- I went through it quickly. I saw some subject matter  
2 that seems to me was explored on direct that -- appropriate to  
3 explore them on counter-designations and appropriate if  
4 generally that subject matter, the nature of his testimony,  
5 that be designated as affirmative designations. The only  
6 issues I saw was with a few questions and answers, mainly  
7 because I don't think the questions were -- one, I think the  
8 questions were either argumentative or the answer was either  
9 nonresponsive or the answer did not make the question or the  
10 answer relevant.

11 MR. BEGLEITER: Your Honor, we understood your  
12 argument. Is that the deposition you're looking at?

13 THE COURT: There are two of them.

14 MR. BEGLEITER: That's right.

15 THE COURT: I'm just trying to remember. It's on page  
16 636 -- I'm sorry. Let me go back. Quite frankly I'm not sure  
17 whose deposition this is. There's a designation on page.

18 MR. BEGLEITER: Page 36, line 17, your Honor.

19 THE COURT: No. It's line 13 of -- Mr. Satyarthi.  
20 It's Mr. Satyarthi, page 30, I'm sorry. Page 30, I think you  
21 might have been right. I'm on page 30. Page 30, lines 13  
22 through 25. I don't see any information being elicited from  
23 this witness with that question and answer.

24 MR. BEGLEITER: Your Honor, we just wanted to see if  
25 Mr. Satyarthi has accepted any money from CNN, as an employee,

F4DAMIT1ps

1 as an independent contractor. That's what -- I've been told  
2 we'll drop it, your Honor.

3 THE COURT: I know, but that wasn't his answer.

4 MR. BEGLEITER: It wasn't his answer.

5 THE COURT: His answer was to debate that in court.  
6 He already gave an answer, I thought, earlier that he had not  
7 received money.

8 MR. BEGLEITER: Your Honor, we'll drop it. It's 30,  
9 line 13, to 30, line 25.

10 THE COURT: When he says, "This is an irrelevant  
11 question"?

12 MR. BEGLEITER: Yes.

13 THE COURT: "It has no relevance beyond" -- that's not  
14 the answer to your question. And then his answer, "Let me tell  
15 you that it is not. Don't ask those irrelevant questions,  
16 because I'm not going to answer them. You're wasting my time  
17 and your time. Let's not waste any more time." That's not the  
18 answer to your question.

19 MR. BEGLEITER: Your Honor, we'll delete the question  
20 and answer. OK?

21 THE COURT: Also, on page 36 --

22 MR. BEGLEITER: 17 to 22?

23 THE COURT: No. I don't have problems with that. Oh,  
24 I had the whole thing, yes. As a matter of fact, I think I had  
25 a problem with that whole page, designation.

F4DAMIT1ps

1 MR. BEGLEITER: Well, the question begins on 35, your  
2 Honor.

3 THE COURT: What is the answer that you want? The  
4 questions are not evidence. The answers are. He says, "Yeah,  
5 be careful. You're talking to someone, not an accused here,  
6 who is a witness, who is trying to help to bring about the  
7 truth. And if you're really interested in truth, be careful  
8 about your words. You are not -- you are not questioning an  
9 accused in American court. You are questioning an Indian  
10 dignitary to find out the truth. Are you interested or are you  
11 interested -- are you interested in the truth or are you  
12 interested in words?" That's the answer you want? That's the  
13 responsive answer to your question?

14 MR. BEGLEITER: Your Honor, it shows hostility. If  
15 nothing else it gives us the right to ask him leading  
16 questions.

17 THE COURT: And then the next line, "I am a seeker of  
18 truth, Mr. Satyarthi. That is good. OK, I should shake hands  
19 with you. OK, great. Thank you." You want that?

20 MR. BEGLEITER: That shouldn't go in, your Honor.  
21 That's gone, your Honor. The other part of it --

22 THE COURT: The most useful thing usually to me is  
23 just read it out loud. That's not the answer to your question.  
24 That doesn't make your point. You're bantering back and forth  
25 with Mr. Satyarthi. The witness says, look, treat me with a



F4DAMIT1ps

1 little respect and I'm not in a criminal case. If you think  
2 that his answers were demonstrating hostility to the extent  
3 that he is an incredible witness, then I assume that that would  
4 be made someplace else.

5 MR. BEGLEITER: Your Honor, we will delete from 30 --  
6 35, 16, through 36, 22.

7 THE COURT: And I only had -- I think I had one more,  
8 which is really a similar kind of thing. I thought there were  
9 three items, but I only saw two. But the rest of it, unless  
10 you tell me somehow that -- I saw, you know, there were  
11 counter-designations and designations with regard to inquiries  
12 about SGFI, and inquiries about Social Entrepreneur and CNN and  
13 Principal Voices and whether he was paid by CNN. I think those  
14 are other places. It seemed to me that those were appropriate  
15 inquiries, subjects of inquiry from both sides for the most  
16 part, about those issues. So I don't see a particular reason  
17 to keep them out from some of your designations or to keep some  
18 of those questions and answers out. So unless there's  
19 something that you feel strongly about and have a strong  
20 argument to make that that clearly shouldn't be in this case,  
21 either by subject matter or by answer, it seems to me that it's  
22 fair game, given the nature of the inquiries of the witness.

23 And that's all I have. Anything from the plaintiffs  
24 that you want to emphasize further?

25 MR. BEGLEITER: No, your Honor.

F4DAMIT1ps

1 THE COURT: Anything?

2 MS. HANSFORD: No, your Honor.

3 THE COURT: So that's basically my guidance, depending  
4 on how you proceed with the evidence. And that will give me a  
5 similar format for me to review with regard to the other, I  
6 think that will be four more depositions and issues that I  
7 don't yet have. When I get those I will go through those.

8 I'm still unclear about the rate concession issue,  
9 because the letter that I got still doesn't tell me what is the  
10 factual basis, or even testimonial basis, for the jury to  
11 conclude that there was a rate concession. Mr. Apfel is not  
12 going to testify. So where is that coming from?

13 MR. KAPOOR: Your Honor, that comes from our damages  
14 expert, Laura Stamm. She interviewed Mr. Apfel personally.

15 THE COURT: You still haven't tell me where  
16 Mr. Apfel's information came from. He could have made it up.  
17 Now you say he's not going to testify that he gave, discussed  
18 with anybody a rate concession, and the fact, just because he  
19 told her doesn't make it so. So I can't tell the jury --  
20 that's a nice hypothetical, but it's an irrelevant hypothetical  
21 if there's no such evidence in this case that it ever happened,  
22 other than he told her that it happened, then there is no  
23 admissible evidence in this case that it happened.

24 MR. KAPOOR: HBO had plenty of opportunity both to  
25 cross-examine both Ms. Stamm, and they did, and Mr. Apfel, and

F4DAMIT1ps

1 they chose not to, about the negotiations.

2 THE COURT: But that doesn't go to the harm, that  
3 question. My question was very simple and was going to be  
4 determinative. If you could tell me that you had a witness who  
5 was going to come in and say that during negotiations they  
6 discussed and gave them a rate concession, then I would say  
7 that, then you have a basis for the expert to say that that was  
8 relevant to her examination. But you came back and said to me,  
9 Apfel is not going to come in here and say that. So if Apfel  
10 is not going to come in here and say that, and nobody else is  
11 going to come in here and say that, then it's not a relevant  
12 analysis for any expert, because it doesn't exist.

13 MR. KAPOOR: If that's your ruling, your Honor, we  
14 understand it. We disagree with it, but we understand it.

15 THE COURT: You could have given her that information  
16 and that would have been a basis for her to come in and  
17 testify, if she sued that for the basis. If you tell me, well,  
18 I gave it to her as a hypothetical or I gave it to her because  
19 A told B, who told C, who told D, that's not -- so without any  
20 admissible evidence that that is a fact, her relying upon that  
21 to tell the jury that they should use that to calculate damages  
22 is inappropriate, if she's using a factor which is not  
23 established in fact before the jury. That's my position. All  
24 right.

25 So I think I've dealt with most of the stuff, not all,

F4DAMIT1ps

1 hopefully all of the things that are before me up until early  
2 this morning.

3 MR. BEGLEITER: Your Honor, the other deposition for  
4 today, what we wanted to show today, or tomorrow, whenever we  
5 can get to it, is Purewal. There are only four objections. Is  
6 it possible to get a ruling now?

7 THE COURT: Yes. I'm sorry. I included my ruling in  
8 my previous ruling. I saw nothing that --

9 MR. BEGLEITER: I'm sorry. I didn't understand that,  
10 your Honor.

11 THE COURT: Yes. Purewal, his testimony was about the  
12 SGI. I was including both of their testimony, SGFI. I didn't  
13 see --

14 MR. BEGLEITER: It just wasn't there, your Honor.

15 THE COURT: Let me just look. Maybe that was where I  
16 wrote -- I thought I had a third one.

17 MR. BEGLEITER: 3744.

18 THE COURT: Yes. There weren't that many objections.

19 MR. BEGLEITER: We have one, 311. The other three are  
20 from HBO.

21 THE COURT: I mean, how many objections did you have?

22 MR. BEGLEITER: We had one, speculation. That's on  
23 page 311.

24 THE COURT: 311.

25 MR. BEGLEITER: Yes.

F4DAMIT1ps

1 THE COURT: Yes. I only saw one or two. Were there  
2 more than one?

3 MR. BEGLEITER: No. That's it. But our objections,  
4 one objection --

5 THE COURT: I'm sorry. What?

6 MR. BEGLEITER: That was on 311, 5 to 16.

7 THE COURT: I'm not sure. Is this somehow in dispute,  
8 this information? Because the way the question was phrased, I  
9 didn't see it as --

10 MR. BEGLEITER: Not really, your Honor.

11 THE COURT: Is it Kam Raghavan who prepared this  
12 document?

13 MR. BEGLEITER: Right.

14 THE COURT: As I say, you need two things to read.  
15 You need a grounds for objection and you need a reason to want  
16 to object. Give me both if you want to be persuasive. Let's  
17 not spend a lot of time on the ones there is not a reason to  
18 object.

19 So I think that that's my position. Look, with regard  
20 to these designations and counter-designations, I have  
21 encouraged and still encourage you to get on the same page and  
22 agree to what will be appropriate and useful process or both.  
23 To the extent that you still can't do that, that's the way my  
24 ruling is. We have to move forward. So when you give me the  
25 other designations, as soon as you can, I'll look at them and I

F4DAMIT1ps

1 will rule on them.

2 Then is there anything that I didn't address?

3 MR. CONSTANTINE: Your Honor, the only thing that you  
4 didn't address was the issue of subtitles, but we will --

5 THE COURT: Yes. Let's take a minute to talk about  
6 that now. You have me at a disadvantage. I'm only ruling in  
7 the abstract. First, the issue of whether it was going to be  
8 native English speakers or non-native English speakers. Then  
9 it sort of morphed into, well, even some of the native English  
10 speakers don't speak so clearly. I don't know if you agree  
11 with that, disagree with that. I don't know how to assess it.

12 MR. CONSTANTINE: We've tested it, your Honor. We've  
13 actually had our technicians into the courtroom. We know when  
14 the courtroom is more crowded it's harder to hear at times.  
15 There is often a time when the question or the answer trails  
16 off, and at that moment, at those moments it is a significant  
17 aid to the jury to actually also see. I recall in December  
18 when we had our pretrial, you, your Honor, indicated your  
19 fondness for that kind of assistance to the jury. We did it at  
20 great expense. We can take it out at great expense. Right now  
21 we are prepared to do it, we are prepared to do the subtitles  
22 for the non-native English speakers. We think it would be a  
23 benefit, even with the native English speakers, to be able to  
24 use it where we know that there are some difficulties in  
25 hearing either the question or the answer.

F4DAMIT1ps

1 THE COURT: Well, two problems I have with that. One  
2 is that if it's so reasonably obvious, how come the other side  
3 can't see it too? And that's not their position. And, two, I  
4 don't have a way to assess that because I don't know which  
5 depositions you're talking about, how many you're talking  
6 about. If there are really one or two, it makes sense for  
7 that, or it makes sense to do them all, quite frankly it  
8 doesn't really matter to me. Whatever is convenient for the  
9 parties, but more importantly, whatever is effective for the  
10 jury to be able to understand the deposition. The reality is  
11 you're supposed to do depositions in a way so that you  
12 accurately record the testimony of the witnesses. If it  
13 doesn't accurately, the video doesn't accurately record the  
14 testimony of the witness, then your other alternative is to use  
15 the transcript and read from a transcript. But, again, it  
16 doesn't matter to me. This is lawyer tactics. This is  
17 strategy. It's not anything more for me. There's no rule that  
18 it's preferable one way or the other. But you two can't agree.  
19 That's the problem.

20 MR. CONSTANTINE: Your Honor, we will simply go with  
21 your ruling of last week, which is, we will take the subtitles  
22 out of the native English speakers. We will only use them with  
23 the non-native English speakers. If in the course of the trial  
24 we see and you see and everybody sees that there are some  
25 difficulties, then we may renew this request.

F4DAMIT1ps

1 THE COURT: And you know what, look, there are ten  
2 different ways to do this. And I'm not here to try to  
3 advantage or disadvantage anybody or try your cases for you.  
4 But, look, if you think that it is not clear what the person is  
5 saying, then, you know, you can also consider whether you want  
6 to offer a transcript, if you think it was unclear for the jury  
7 to hear that, they have the right to the testimony. And they  
8 have the right to the testimony in the form of video deposition  
9 or in the form of a transcript that is prepared after the  
10 deposition is done. Or both. So if you think that there's a  
11 genuine problem there, that's one thing. But if it's just sort  
12 of that, well, you think that you would be better off if you  
13 had subtitles and they think they will be better off if you  
14 don't, I'm not particularly eager to jump into that debate.

15 And literally, literally, if you want me to look at a  
16 video and say, look, that video is really hard to hear and the  
17 jury won't be able to understand what this witness is saying,  
18 then, as I say, one of a number of alternatives, or two of a  
19 number of alternatives is to do those subtitles there or to  
20 offer the transcript if in addition or in lieu of the  
21 testimony, or read it to the jury if you want, but you can  
22 consider what you want to do. But I can't go through the  
23 depositions and try to figure out who's better off for this  
24 deposition if you have subtitles or you don't have subtitles.  
25 And as they say, one side is against it merely because the



F4DAMIT1ps

1 other side is for it. That's the debate I have.

2 MR. CONSTANTINE: This was motivated by making it  
3 better for the jury. And we are in the process whereby,  
4 several days in a row, we disclosed which deposition is going  
5 to be shown. We always watch them in advance. And if we see  
6 that there's one which is particularly problematic, we will  
7 call that.

8 THE COURT: Well, as I say, there's an old defense  
9 saying, particularly in criminal cases, my job is not to  
10 convince them, it's to confuse them. Maybe that's what they  
11 think; they're better off if the jury can't hear what they have  
12 to say. I don't know. If you two think that the jury -- the  
13 important thing is to make sure that the jury gets all the  
14 admissible evidence that they're entitled to. So if you can  
15 convince me that they're being unreasonable, then I will listen  
16 to it and I'll say, yes, it's obvious to anybody that they need  
17 some other aid.

18 MR. CONSTANTINE: Your Honor, you probably, like me,  
19 have been to parent-teacher conferences where they say, some  
20 children learn by reading and some children learn by hearing.  
21 And some of those children are going to be in the jury box, and  
22 we would like to have both of those available for all of the  
23 jury.

24 THE COURT: And, you know, I don't think that that's  
25 an unreasonable position. But it's also a reasonable position

F4DAMIT1ps

1 that they take that they would rather have the jury just  
2 concentrate on the witness and not be as concerned about trying  
3 to read at the same time. Either way, quite frankly, I don't  
4 think -- as they say, if that's the determinative factor in  
5 your case, then one of you shouldn't be here. If you can find  
6 a compromise between the two of you or you think that it's  
7 important enough to convince me to do something over their  
8 objection in this regard --

9 MR. CONSTANTINE: We had a compromise and think it's a  
10 fair compromise. It's the non-native versus native. And thank  
11 you, your Honor.

12 THE COURT: Well, compromise is something the two  
13 sides agree to. We haven't gotten that far, unfortunately.

14 Did you have something?

15 MR. HENTOFF: Yes, your Honor. The parties submitted  
16 yesterday jointly five agreed proposed pretrial instructions  
17 for the Court to consider to read for the jury at the beginning  
18 of the case. And the parties have also agreed on a statement  
19 for the Court to read to the jury.

20 THE COURT: I don't think that I got that in chambers.  
21 Did you just file that on ECF?

22 MR. HENTOFF: Your Honor, we filed it on Sunday, but I  
23 can hand up the jury instructions.

24 THE COURT: You can give me both. I don't think I  
25 have either one of them.

F4DAMIT1ps

1 MR. HENTOFF: And these are agreed.

2 THE COURT: And you want all of these instructions  
3 given after the jury is impaneled and before you open?

4 MR. HENTOFF: Yes, your Honor.

5 THE COURT: All right. I don't have any problems with  
6 that. I have my standard preliminary instructions. I can give  
7 you a copy of that. You can look that over. And if you prefer  
8 yours to mine I have no problem.

9 MR. HENTOFF: Your Honor, the one that we think is  
10 particularly helpful is number five, which sets forth the  
11 elements of the libel claim.

12 THE COURT: In essence number five could, maybe not  
13 necessarily in this detail, but number five is what I think is  
14 appropriate to give when I introduce the parties and tell them  
15 what this case is about, before I start voir dire, so the whole  
16 panel. So five I would substitute for, I usually give them a  
17 basic instruction about what the case is about.

18 I was just going to basically explain to them, the  
19 case is brought by HBO about Children of Industry and an HBO  
20 televised program called Real Sports of Bryant Gumbel, saying  
21 that they turned a blind eye to the use of child labor,  
22 resulting in damages to Mitre. HBO denies the allegations and  
23 contends that their program is not defamatory in any way.

24 MR. HENTOFF: Your Honor, HBO is fine with that  
25 instruction.

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1 THE COURT: I don't usually get deeper into the facts  
2 of the case. But I am perfectly willing to do what both sides  
3 agree to.

4 MR. KAPOOR: Your Honor, we actually have two  
5 defamation claims. One is what your Honor just read,  
6 concerning HBO's allegations in Jalandhar, India. And then  
7 there is a second claim, and it's summarized in our proposed  
8 jury instructions, to the effect that Mitre uses child slave  
9 labor in Meerut, India.

10 THE COURT: I could refer to Meerut and Jalandhar. I  
11 don't have a problem with that. Just tell me how you pronounce  
12 it, again.

13 MR. KAPOOR: Jalandhar.

14 THE COURT: Jalandhar?

15 MR. KAPOOR: J-a-l-a-n-d-h-a-r.

16 THE COURT: Pronounced Jalandhar?

17 MR. KAPOOR: Jalandhar.

18 THE COURT: And Meerut?

19 MR. KAPOOR: Meerut, M-e-e-r-u-t.

20 THE COURT: Meerut.

21 Mitre alleges that HBO falsely portrayed Mitre as  
22 using child labor or turning a blind eye to the use of child  
23 labor in Jalandhar and Meerut.

24 MR. KAPOOR: Well, the specific claim is that HBO  
25 alleges that Mitre uses child slave labor in Meerut, India.

F4DAMIT1ps

1 THE COURT: I'm not sure that -- it doesn't matter to  
2 me. I'm not sure slavery is really the issue. I don't  
3 remember any reference in the program to slavery.

4 MR. KAPOOR: It's, if not the central focus of the  
5 program, your Honor may recall that, in the program, that  
6 Kailash Satyarthi says, this is slavery. Bernard Goldberg  
7 says, you're calling this slavery. And Mr. Satyarthi  
8 emphasizes that it's slavery.

9 THE COURT: As they say, be careful what you ask for,  
10 you may get it. If you want me to describe this case as being  
11 about, you have to prove that they were involved in slave  
12 labor, I will say that. But I'm not sure that you're putting  
13 more of a burden on yourself, rather than thinking that you are  
14 getting some sort of reaction from the jury about slavery with  
15 children. The reality is that the defamatory nature of an  
16 allegation is the fact that they have been using child labor.  
17 Whether it's defined and qualifies as slave labor or not  
18 doesn't seem to be -- this, as they say, may be icing on the  
19 cake, if you want to throw it in there, but it doesn't seem to  
20 be your burden. But in fact if you want me to tell them that  
21 that's what you allege and that's what you have to prove, then  
22 I'm willing to tell them.

23 MR. KAPOOR: Yes, your Honor. Our defamation claims,  
24 there are two of them, one that Mitre turns a blind eye to the  
25 use of child labor in Jalandhar, and, worse, that Mitre uses

F4DAMIT1ps

1 child slave labor in Meerut. That's what the show portrays,  
2 your Honor, and those are our claims.

3 THE COURT: Well, I think that -- I'm not going to  
4 get -- I will look at -- well, let's put it this way. I don't  
5 think that that's what you asked me to tell them. You say you  
6 agreed upon a statement to them. That's not in this statement.

7 MR. KAPOOR: Your Honor, in the proposed jury charge,  
8 after the close of the evidence, that is how we describe our  
9 two claims. In what we submitted to the Court yesterday, we  
10 didn't get into that level of detail, meaning that we did not  
11 get into a level of detail of what was going on in Jalandhar  
12 either.

13 THE COURT: But you're saying to me now you want me to  
14 get into that level of detail.

15 MR. KAPOOR: No, your Honor. If your Honor is going  
16 to describe Mitre's claim in Jalandhar, we think it's necessary  
17 that your Honor also describes Mitre's separate claim regarding  
18 Meerut. The other alternative is that your Honor simply give  
19 the instruction --

20 THE COURT: I'm not quite sure, even if I don't have  
21 any -- I don't have any strong reaction to it one way or the  
22 other, but I'm not quite sure what you say is the difference  
23 that you have to prove with regard to Jalandhar and with regard  
24 to Meerut, how you prove that one is slave labor and one is  
25 not.

F4DAMIT1ps

1 MR. KAPOOR: We would then prefer that your Honor just  
2 give the instruction as we proposed it in proposed instruction  
3 number five, to which HBO and Mitre agreed, and not reference  
4 specifically Jalandhar or Meerut. We'll save that for the jury  
5 charge at the end of the case, after the close of the evidence.

6 THE COURT: But you don't want me to say that HBO  
7 falsely portrayed Mitre as using child labor?

8 MR. KAPOOR: In the preliminary instructions that is  
9 correct, your Honor.

10 THE COURT: You don't want me to say that.

11 MR. KAPOOR: That is correct, your Honor.

12 MR. BUTSWINKAS: Your Honor, we would like you to give  
13 the instruction that you were going to give as a preliminary  
14 instruction. Your instruction is better than the one the  
15 parties came up with.

16 THE COURT: Usually it is. Until we start talking  
17 about it. Everyone changes their line.

18 MR. BUTSWINKAS: Your Honor, I'm just saying that your  
19 instruction is a lot better because if we instruct on in  
20 minutia, we're never going to get the case done.

21 THE COURT: I just want a pithy way to say it. This  
22 is a defamation claims. They accuse you of using child labor  
23 and that was false and that's what this case is about. If you  
24 could give me the details in opening statement of what you say  
25 you want to prove.

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1 MR. KAPOOR: Your Honor, that's not what our case is.  
2 Our case is about two claims of defamation, two defamatory  
3 statements made by the show. If your Honor doesn't want to get  
4 into --

5 THE COURT: That's fine. But you guys are splitting  
6 hairs, as lawyers do. The jury is not going to particularly  
7 care, if they find that you were using slave labor, they're not  
8 going to care whether it happened ten miles out of Meerut or  
9 whether it happened in Meerut. So that's not going to be the  
10 issue here. You can sort of try to put it into that slot if  
11 you want, but the jurors, they don't --

12 MR. KAPOOR: If your Honor is concerned about  
13 referencing specific cities, then we would be OK with something  
14 like Mitre claims that HBO defamed Mitre by portraying Mitre as  
15 using child labor and child slavery. There are two claims of  
16 defamation. And we move for summary judgment on both claims.

17 THE COURT: You know what. That's why I don't like to  
18 get -- you would just like to tell them the case is about them  
19 accusing you of using children to sell soccer balls. That's  
20 not from the jury's perspective.

21 (Continued on next page)  
22  
23  
24  
25



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1 THE COURT: You may want to make it more complicated.

2 MR. KAPOOR: Respectfully, that's not a correct  
3 characterization of what we are claiming.

4 THE COURT: I am going to let you characterize your  
5 claim because I don't know how to characterize your claim,  
6 other than you were kind of mad at them when they said you had  
7 children working in India, from my simple perspective.

8 MR. KAPOOR: You did characterize our claim correctly  
9 on summary judgment when your Honor said that our claim is that  
10 HBO is accusing Mitre of actively doing something. It's not  
11 simply that children are stitching soccer balls. It is that  
12 Mitre is using child labor or turning a blind eye to using  
13 child labor in one city in India, and worse, that Mitre is  
14 using child slave labor in another city in India.

15 THE COURT: I would not make too fine a distinction  
16 when you argue that to the jury. Otherwise, they are going to  
17 think that you're not talking to them. This case is a lot more  
18 simple than that. If you think they are going to parse it out  
19 that way, that's fine. I am going to stay out of your way.  
20 You can present your case any way you want to. If that's the  
21 way you want to characterize it to them and tell them that you  
22 can only find in your favor on those limited issues, I will let  
23 you do. As I say, after you get past all the lawyer stuff,  
24 it's not that complicated for a jury in terms of the issues.

25 MR. KAPOOR: What is the exact instruction?

F4D8MIT2

1 THE COURT: I will give the exact instruction that you  
2 have asked me jointly to give. That's it.

3 MR. KAPOOR: That's fine.

4 We also have an agreed upon statement regarding your  
5 introduction to children of industry. I can hand it up right  
6 now.

7 THE COURT: So I am going to give your proposed  
8 instruction number 5 when I introduce the parties and tell the  
9 parties what this case is about. I am not going to say  
10 anything about children, anything about slave labor, child  
11 labor. That's not what is in the instruction.

12 MR. KAPOOR: Thank you, your Honor.

13 THE COURT: In opening statement you can define the  
14 issues to the jury on both sides, and then after the opening  
15 statement, I will give them the agreed upon statement regarding  
16 children of industry that you want me to give them before it's  
17 played. Then you will play it. And then I will turn to the  
18 plaintiffs and ask them to call their witness first.

19 I'm sorry, you wanted it played before opening.

20 MR. CONSTANTINE: You will tell them what they are  
21 going to see. We have agreed on language with HBO. And then  
22 they will see the footage and then we will open and HBO will  
23 open.

24 THE COURT: So then we are ready. Our jurors are  
25 ready, if you're ready.

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1           Why don't you take a short break and when the jurors  
2           come up on the floor we will bring them in.

3           When the jurors come in, I am going to ask you to  
4           stand for a little bit until we can get the jurors seated.  
5           Let's take a short break, five minutes, and we should have the  
6           jury here.

7           (Recess)

## AFTERNOON SESSION

2:30 p.m.

THE COURT: At this point, the parties want me to give your proposed instructions 1 through 4?

MR. KAPOOR: Yes, your Honor.

THE COURT: I think we are missing one juror.

(Jury present)

THE COURT: Swear in the jury, please.

(Jury sworn)

THE COURT: Ladies and gentlemen, this case is now officially on trial and you're the jurors in the case.

The function of the jury is to decide disputed issues in the case, disputed fact issues in the case. To discharge this duty, it is important that you listen carefully to the witnesses as they testify and form no judgment with respect to any witness or the outcome of the case as the trial moves forward. In short, it's important to keep an open mind throughout the entire trial.

It is also important to observe the witnesses as they testify. The reason for this is that the credibility of some of the witnesses will be at issue. You will be called upon to appraise the credibility or truthfulness of a particular witness's testimony. Often it is not what a witness says or how the witness says it that may give you a clue as to whether or not to accept his or her version of the events or an event

1 is credible or believable. In short, the witness's manner of  
2 testifying before you, the witness's appearance -- that is  
3 general demeanor -- is a factor that may play an important part  
4 in your reaching judgment as to whether or not you can accept  
5 that witness's testimony as reliable.

6 Now, as the trial proceeds, you may have impressions  
7 of a witness or a subject, but you should not allow these  
8 impressions to become fixed or hardened. If you do, in a sense  
9 you foreclose consideration of the testimony of other witnesses  
10 or other evidence that may come in after the witness you heard.  
11 This would be unfair to one side or the other. A case can be  
12 presented only step by step, witness by witness, before the  
13 totality of all the evidence is before you.

14 Now, we know from experience that frequently we will  
15 hear a person give a version of an event which sounds most  
16 impressive and often compelling, and yet when we hear another  
17 person's version of the same event, or even the same witness  
18 cross-examined with respect to it, what is seen as very  
19 compelling and impressive may be completely dissipated or weak.  
20 In other words, usually there is another side to every story.  
21 Thus, it is important to keep open mind throughout the taking  
22 of evidence.

23 The parties and their counsel are instructed not to  
24 speak to the jurors or to speak about the case in your  
25 presence. Thus, you should understand that if they fail to

1 acknowledge your presence, if you should see them at times when  
2 the court is not in session, they are not impolite or  
3 discourteous but simply following the order of the Court.

4 Now, a word about trial procedure. The trial proper  
5 will start with what are called opening statements. The  
6 attorneys representing each side will, before any evidence is  
7 received, appear before you and make an opening statement.  
8 This is a sort framework or reference as to what the case is  
9 about, the issues in the case.

10 The attorneys will set forth what they believe -- and  
11 I underscore the word believe -- what the evidence will show.  
12 These statements by the lawyers are made in good faith and on  
13 the basis of their preparation for trial. But I must caution  
14 you now, and probably will again during the course of the  
15 trial, that however helpful these opening statements may be, so  
16 that we could follow the testimony with reference to the issues  
17 in the case, they are not a substitute for the evidence.

18 The only evidence that you may act upon is that which  
19 you will hear from a witness, who will be sworn in your  
20 presence, who takes an oath to tell the truth, and following  
21 questioning on direct examination is subject to  
22 cross-examination, and such documents or exhibits as are  
23 admitted in evidence.

24 Now, the totality of the testimony of witnesses and  
25 the exhibits is the evidence upon which you will reach a

1 verdict in the case. If during the course of the trial a  
2 lawyer for each side makes any statement or reference to a fact  
3 matter, or includes a fact reference in a question, or  
4 eventually in his or her summation refers to fact matters, you  
5 will bear in mind that statements by the lawyers are not  
6 evidence. The sole and only evidence is that to which I have  
7 already referred.

8 Now, upon the conclusion of all the testimony, the  
9 lawyers will again address you. This is called the summation.  
10 Each will urge upon you the arguments that he or she believes  
11 support whatever position he or she advocates. You will, of  
12 course, listen attentively to the lawyers. The determination  
13 as to whether or not you accept any argument advanced before  
14 you by the plaintiff or the defendant is entirely up to you.  
15 You make the fact determination. You may accept such arguments  
16 as appeal to you. If not, you may reject them.

17 Following the lawyers' summations, the Court will  
18 instruct you as to the law, and it is then that you will go  
19 into the jury room and undertake your fact-finding function.  
20 The ultimate decision in finding the facts, deciding the facts  
21 is yours. This must be based upon the evidence presented to  
22 you.

23 Now, before we start the trial, let me give you a few  
24 rules of the road.

25 First, please do not discuss the case with anyone.

1 This includes discussing the case in person, in writing, by  
2 phone or electronic means -- be it text messaging, e-mail,  
3 Facebook, Twitter, blogging, or any Internet chat room, Web  
4 site or other feature. If you have to tell someone, such as  
5 your spouse or your employer, that you're serving on a jury and  
6 that the trial may last as long as three to four weeks, that's  
7 OK. But when they inevitably ask you what the case is about,  
8 please tell them that you're under strict instructions from the  
9 judge not to discuss the case. The reasons for this,  
10 obviously, is that we want you to decide this case solely on  
11 the evidence presented in this courtroom and not on the basis  
12 of anything anyone who hasn't heard the evidence may think  
13 about the case. If you are asked or approached in any way  
14 about your jury service or anything about this case, you should  
15 respond that you have been ordered by the judge not to discuss  
16 the matter, and you should report the contact to the Court as  
17 soon as possible.

18 Now, along the same lines, you should not try to  
19 access any information about the case, conduct your own  
20 investigation or do research of any party or issue that arises  
21 in the case from any outside source, including dictionaries,  
22 reference books, or anything on the Internet.

23 There may be some media attention given to this case  
24 in the newspaper, or on the radio, television or Internet. If  
25 there is that kind of media attention during the trial, you



1 must insulate yourselves from all information about this case,  
2 except what comes to you in this courtroom through the rules of  
3 evidence. So when you leave here, and go to your home and pick  
4 up the paper or check a Web site, if you see something about  
5 the case, you must put the paper down or close the Internet  
6 browser right away. Do not read the article. You should also  
7 avoid listening to or watching any radio or television  
8 discussion of the case. Your sworn duty is to decide this case  
9 solely and wholly on the evidence presented in this courtroom.

10 Finally, do not discuss the case even among yourselves  
11 until all the evidence has been presented and the case has been  
12 given to you for your deliberations. The reason for this is  
13 that the evidence will be presented one witness and one exhibit  
14 at a time and it's important that you keep an open mind until  
15 you have heard all the evidence.

16 Now, if you want to take notes during the course of  
17 the trial, you may do so. If you do take notes, be sure that  
18 your note taking does not interfere with your listening to or  
19 considering all of the evidence. Also, if you take notes, do  
20 not discuss them with anyone before or during your  
21 deliberations. Your notes are to be used solely to assist you,  
22 and they are not to substitute for your recollection of the  
23 evidence in the case. The fact that a particular juror has  
24 taken notes entitles that juror's views to no greater weight  
25 than those of any other juror, and your notes are not to be

1 shown to other jurors during your deliberations. If during  
2 your deliberations you have any doubt as to the testimony, you  
3 will be permitted to request that the official trial  
4 transcript, which is being made of the proceedings, be read to  
5 you.

6 Now, it is the duty of the attorneys to object when  
7 the other side offers testimony or other evidence which the  
8 attorney believes is not properly admissible. Counsel also  
9 have the right and duty to ask the Court to make rulings of law  
10 and to request conferences at the sidebar out of the hearing of  
11 the jury, and all those questions of law must be decided by me,  
12 the Court. You should not show any prejudice against an  
13 attorney or any party because an attorney objects to the  
14 admissibility of evidence or asks for a conference out of the  
15 hearing of the jury or asks the Court for a ruling on the law.  
16 As I already indicated, my rulings on the admissibility of  
17 evidence do not indicate any opinion about the weight or effect  
18 of the evidence. You are the sole judges of the credibility of  
19 all witnesses and the weight and effect of all evidence.

20 Ladies and gentlemen, what we are going to do is in a  
21 few minutes we are going to the opening statements of the  
22 lawyers. But, first, Mitre and HBO have agreed that before  
23 they present their opening statements, you should watch the  
24 portion of the television program that is the subject of this  
25 lawsuit. It is a 22-minute segment of episode number 138 of

1 the HBO series Real Sports with Bryant Gumbel. This program  
2 was shown on HBO for the first time on September 16, 2008.  
3 Please watch it carefully.

4 Are you ready to play the video?

5 (Video played)

6 MR. BEGLEITER: Can we have the preliminary  
7 instructions for the jury?

8 THE COURT: I thought I gave them.

9 MR. BEGLEITER: Concerning the case, that we handed up  
10 to you that was agreed upon by the parties.

11 I misunderstood. I apologize.

12 THE COURT: Would you like to make an opening  
13 statement at this time?

14 Mr. Constantine.

15 MR. CONSTANTINE: Thank you, your Honor.

16 Your Honor, may I have permission to use a laser  
17 pointer during my opening?

18 THE COURT: Yes.

19 MR. CONSTANTINE: Thank you.

20 Thank you, ladies and gentlemen of the jury, for the  
21 important and difficult work you are about to do.

22 By carefully watching this TV show called "Children of  
23 Industry," you have already done your most important work.  
24 Please take a moment to fix in your minds what you saw and what  
25 you understood was shown and charged in this TV show, and

F4D8MIT3

Opening - Mr. Constantine

1 specifically about Mitre and the people who work for that  
2 company.

3 Right now, please ask yourself, what brand of ball was  
4 Gurmeet Kumar, that poor little boy in Meerut, stitching. The  
5 one who was sold into slavery for less than a hundred dollars.  
6 The one whose little brother died.

7 Ask yourself what brand of ball was labeled "child  
8 labor free" as you watched kids stitching them.

9 Ask yourself what brand is associated with every  
10 despicable practice portrayed in this show.

11 Please do that now.

12 You are now in the same position as millions of  
13 American viewers who watched this show and was telecast 104  
14 times in 2008. And the verdict you render a few weeks from now  
15 will not merely determine the dispute between Mitre and HBO,  
16 because if Real Sports can get away with what they did here,  
17 all bets are off.

18 My name is Lloyd Constantine. I and my colleagues  
19 from the firm Constantine Cannon are proud to have represented  
20 Mitre since 2008. As you will see when you watch the testimony  
21 taken five and six years ago in the United States, in Britain,  
22 and, most importantly, in India, it's been a very long  
23 struggle, but the day of reckoning has finally come.

24 As you saw and heard, Children of Industry and its  
25 host and correspondent, Bryant Gumbel and Bernard Goldberg,

F4D8MIT3

Opening - Mr. Constantine

1 constantly criticized soccer ball companies and talked about  
2 "at least ten international brands." But only one brand was  
3 shown and mentioned over and over and over again, 24 times in  
4 22 minutes, Mitre.

5 So, just a little bit now and more later about Mitre.  
6 Since before today, most people in America, and I know the  
7 judge asked you and none of you ever heard of it, so most  
8 people had not heard of them.

9 So, who is Mitre? Mitre is the oldest soccer ball  
10 company in the world. It was established during the 19th  
11 century in England. Mitre balls have been used many  
12 championships. Muhammad Ali wore Mitre equipment when he  
13 regained the heavyweight crown. Mitre's finest soccer balls  
14 are made in the Punjab region of India and Pakistan. That's  
15 the world hub for the highest quality hand-stitched soccer  
16 balls throughout the 20th and 21st century.

17 This is not an outsourcing story. Those balls have  
18 been made there for more than a century.

19 The Punjab is a region where child labor in hundreds  
20 of industries has existed for thousands of years. But child  
21 labor has been substantially eliminated in this industry, in  
22 the soccer ball industry, and mostly because of Mitre. That  
23 had been accomplished ten full years before this show was  
24 telecast.

25 In 1995, Mitre was purchased by Pentland, a

F4D8MIT3

Opening - Mr. Constantine

1 family-owned company based in London that owns some brands that  
2 you might recognize, like Speedo, the swimwear company, and  
3 Canterbury, whose rugby jerseys were worn by the All Blacks of  
4 New Zealand and the Springboks of South Africa, that was Nelson  
5 Mandela's team. You might recognize Hunter Boots, KangaROOS  
6 footwear, some of the other brands that Pentland owns.

7 The very moment that Pentland bought Mitre in 1995,  
8 its owners, Stephen and Andy Rubin, rallied the entire sporting  
9 goods industry -- not just soccer, the entire world's sporting  
10 goods industry -- in a worldwide effort to eliminate child  
11 labor from the entire industry, and to attack the real cause of  
12 child labor: Poverty in the communities where these children  
13 live.

14 This is Mr. Rubin. This is Stephen Rubin right here.

15 You will hear his testimony and Andy Rubin's testimony  
16 about this.

17 Here is a clip from HBO's files of an Atlanta TV news  
18 piece in 1997, 11 years before this show, reporting on the  
19 historic worldwide effort that this gentleman began.

20 (Videotape played)

21 MR. CONSTANTINE: 1997.

22 As the evidence will prove, by 1999, because of the  
23 Rubins' leadership, child labor had been vastly reduced, in  
24 soccer ball stitching that occurs in the homes of adult  
25 stitchers in the Punjab, and has steadily decreased since.

1 Cottage industries exist there, and in rural societies around  
2 the world, allowing people, especially adult women, to help  
3 support their families while raising children and doing  
4 domestic chores.

5 I am going to talk to you more about Mitre, Pentland,  
6 and this historic and very successful effort to eliminate child  
7 labor a little bit later, but now, allow me to tell you a  
8 little bit about the TV show you just saw before.

9 Children of Industry was featured in one episode of  
10 Real Sports with Bryant Gumbel, a series that has been telecast  
11 by Time Warner's HBO network for 20 years.

12 Real Sports is a news program, and as its name  
13 suggests, it is supposed to report real news, not fiction, like  
14 Boardwalk Empire or Girls.

15 But the evidence will demonstrate that most of  
16 Children of Industry is fiction. It's false and most of it was  
17 a flat-out lie. Because it was not only false, but it was told  
18 with HBO's knowledge of its falsity. Not only is the show a  
19 pack of lies, as a witness who will come before you will  
20 testify from India, but its producers also lied to everyone in  
21 the process of making it.

22 I am going to preview for you just some of the  
23 overwhelming evidence that you will receive demonstrating this  
24 persuasive, reckless, and intentional falsity.

25 As you saw, and you will be shown it again, Children

1 of Industry is a tale of two cities in India -- and I use the  
2 term "tale" advisedly -- Meerut in Utter Pradesh and Jalandhar  
3 in the Punjab. Those two places are 225 miles away and five  
4 hours on a train.

5 First, I will preview the evidence demonstrated a  
6 false story created in Meerut. Then the separate, but equally  
7 false, story created by Real Sports in Jalandhar. Then the  
8 grossly negligent and reckless way these falsehoods were  
9 invented. And, finally, perhaps the biggest sham, the closing  
10 conversation that you just saw between Gumbel and Correspondent  
11 Goldberg, the crosstalk. That's what they call that, the  
12 crosstalk.

13 So let's begin our journey to India in Meerut, where  
14 Real Sports tells us that child stitchers are slaves in debt  
15 bondage, working eternally, attempting to repay debts to soccer  
16 ball companies.

17 Meerut is the home of Gurmeet Kumar. He is a  
18 character. A character, that is how Bryant Gumbel, Bernard  
19 Goldberg, and the show's producer, Joseph Perskie, describe  
20 Gurmeet and Rishi, the baby brother whose death is a big  
21 feature in this show. You will see that testimony. These poor  
22 kids are just characters for Real Sports, playing a role of  
23 abused victims in the tragedy portion of this show, in which  
24 Mitre is cast as the villain and Real Sports and Bernard  
25 Goldberg are heros.



1           While things in Meerut, like the death of that poor  
2 baby, are horrible, very sad, most of what you saw about Meerut  
3 and about the Gurmeet Kumar tragedy was falsified. The scenes  
4 were staged and Real Sports placed Mitre right in the middle of  
5 that made-up world. But the evidence will show you that not  
6 one Mitre brand soccer ball has ever been manufactured in  
7 Meerut. Not one. Never. Not one.

8           While Real Sports hoped to find Mitre there, they  
9 didn't. They couldn't. Because they have never been made  
10 there.

11           Here is the show's producer, Joseph Perskie, admitting  
12 that.

13           (Videotape played)

14           MR. CONSTANTINE: But the truth, that didn't stop Real  
15 Sports from placing Mitre right in the middle of Meerut and the  
16 Gurmeet Kumar tragedy so the show could have a villain. Real  
17 Sports deceptively edited and sliced and diced interviews to  
18 make people appear to be criticizing Mitre, when they weren't.  
19 And appear to be talking about Jalandhar, one city, when they  
20 were talking about Meerut, which is a very different place.

21           They did that to Kailash Satyarthi, who won the Nobel  
22 Peace Prize for his work helping children.

23           This is Mr. Satyarthi you saw in the show. Both Mr.  
24 Satyarthi and Charlotte Ponticelli, the highest ranking U.S.  
25 official working to stop child labor, will testify about how

F4D8MIT3

Opening - Mr. Constantine

1 Real Sports deceived them, deceptively edited their interviews  
2 to make them appear to be saying something very different from  
3 what they actually said. You can do that with editing. And in  
4 Mr. Satyarthi's case, make him appear to be criticizing Mitre,  
5 when his opinion of Mitre was exactly opposite.

6 Please watch this clip from the show where Mr.  
7 Satyarthi seemingly criticizes Mitre's hypocrisy.

8 (Videotape played)

9 MR. CONSTANTINE: But the actual interview of  
10 Satyarthi that you will see shows that Mr. Satyarthi wasn't  
11 shown Mitre's policy, and he wasn't talking about Mitre.

12 When I took his testimony in India, Satyarthi  
13 testified that he had a high opinion of Mitre. He had never  
14 seen any kids stitching a Mitre ball. And he was shocked.  
15 When he first saw that, you know where he first saw it? He saw  
16 it while watching the same show that you just saw, on a DVD  
17 sent to him by HBO.

18 (Videotape played)

19 MR. CONSTANTINE: The Nobel Peace Prize winner knows  
20 that Mitre is one of the leading social corporate  
21 responsibility companies.

22 Real Sports intended that people blame all the  
23 despicable conduct in Meerut -- some real, but as you will see  
24 here in the trial, mostly just invented -- all on Mitre, whose  
25 soccer balls were not made there and never have been. I am

1 going to repeat that a number of times, and I apologize for  
2 that. By naming Mitre and showing its brand constantly and  
3 exclusively, while the dialogue and the commentary and the  
4 images veered back and forth between these two very different  
5 places, Meerut and Jalandhar, with very different stitching  
6 industries, involving very, very different companies, and by  
7 deceptive edits, like the one that I showed you with Mr.  
8 Satyarthi's interview.

9 Before we leave Meerut and the sham created there by  
10 Real Sports, let's watch another piece of staging and deceptive  
11 editing involving a little boy in Meerut whose portrayal  
12 demonstrates many of the tricks used in making this show.

13 This little boy is Pankaj. Real Sports portrays  
14 Pankaj as a stitcher making balls for rich kids in America.

15 (Videotape played)

16 MR. CONSTANTINE: I am going to show you a little bit  
17 of the unaired footage, the outtakes, showing Pankaj playing  
18 with materials being stitched by his mother and his sister in  
19 their home, while the Real Sports cameraman, a gentleman named  
20 Vijay Bedi, gives orders in Hindi translated as: Talk to him.  
21 Explain to him how to do it. Talk to him. He doesn't know how  
22 to do it.

23 (Videotape played).

24 MR. CONSTANTINE: You will see the whole thing during  
25 the trial, and I want you to remember the sister on the right,

1 Poojah, a beautiful little girl.

2 Real Sports Associate Producer Zehra Mamdani confirmed  
3 meeting this kid, but incredibly denied that Pankaj had been  
4 portrayed as a child stitcher in the show where Bernie Goldberg  
5 says: Kids like these, making balls for kids like these, in  
6 nice American suburbs.

7 So, after falsely placing Mitre in Meerut, where Mitre  
8 soccer balls had never been made, Real Sports travelled 225  
9 miles to Jalandhar, in the Punjab, near India's border with  
10 Pakistan, to invent a separate, but equally false, story about  
11 Mitre, in the vastly different soccer ball industry there with  
12 vastly different companies.

13 In Jalandhar, Children of Industry said soccer ball  
14 companies "like hiring children instead of their parents." You  
15 heard that. Because they pay children a nickel an hour. You  
16 heard that several times. Less than adults get paid. And  
17 because adults would unionize and go on strike. Goldberg says  
18 that at the beginning and again at the end of the show.

19 Goldberg also says that the soccer ball companies in  
20 Jalandhar, as well as the U.S. and Indian governments, all  
21 claim that no children are stitching soccer balls there. When  
22 they are shown that some kids are stitching, they say, We  
23 didn't know. Who hires kids, but won't employ their parents,  
24 are hypocrites, hide their eyes, and pretend not to know. The  
25 only brand mentioned in the show, again, is Mitre, charged with

1 every despicable practice, and most of those as fictional as  
2 the twirling spiders in Game of Thrones.

3 As the evidence will show, the soccer ball makers in  
4 Jalandhar, India, employ adults only to stitch soccer balls.  
5 They are paid per-ball rates, not hourly. The manufacturers  
6 have absolutely no economic incentive for children to stitch,  
7 as the payment for each ball is fixed and the same regardless  
8 of who stitches it. Most of the soccer balls hand-stitched in  
9 Jalandhar are stitched in homes, a cottage industry, by adult  
10 women. Typical of all of the cottage industries in India.

11 The poor women who stitch soccer balls in Jalandhar  
12 occasionally try to make some extra money by giving their kids  
13 soccer balls to stitch. That's how, and that's why, and that's  
14 where, at home, children sometimes stitch soccer balls in  
15 Jalandhar, but very, very infrequently.

16 Because since 1998, there has been a non-government  
17 organization, or NGO, called the Sports Goods Foundation of  
18 India, or SGFI, which has operated with the full support of  
19 every soccer ball maker in Jalandhar. That's the SGFI symbol.  
20 And that is the truth.

21 SGFI does just one thing, in just one place,  
22 Jalandhar, India. It finds kids stitching soccer balls at  
23 home, balls given to them by their mothers. It gets those kids  
24 into school and it gives those families the assistance  
25 necessary to eliminate their need to use their kids for extra

F4D8MIT3

Opening - Mr. Constantine

1 income.

2 Mitre does not manufacture soccer balls. Mitre  
3 doesn't make soccer balls. Mitre is a brand. Real Sports knew  
4 that.

5 Mitre brand soccer balls are manufactured in Jalandhar  
6 by two suppliers, companies called Mare & Company and Soccer  
7 International.

8 (Continued on next page)

1 MR. CONSTANTINE: In 1998, those two and the other  
2 manufacturers in Jalandhar established SGFI, with the help of  
3 the international labor organization, Unicef, Save the  
4 Children, a former prime minister of India, who is still on the  
5 board, and with lots and lots and lots of help from Mitre. In  
6 1999, the SGFI child labor monitoring system was operating with  
7 independent monitors from the world's foremost inspection  
8 organization, which is based in Paramus. Since then, SGFI  
9 monitors daily make unannounced visits within the thousands of  
10 homes where most of these balls are stitched. They look for  
11 and they find children stitching soccer balls -- because there  
12 are kids doing it, very few, but some are; the balls are given  
13 to them by their mothers -- and they put those kids into  
14 special schools. And then they give the families assistance so  
15 the parents won't continue to have the kids do any work -- not  
16 just soccer stitching, any work -- that would interfere with  
17 their schooling. This SGFI plate must be displayed on the door  
18 of every stitcher's home in Jalandhar, adult stitcher,  
19 authorized to stitch soccer balls.

20 Real Sports knew all about SGFI. It was operating ten  
21 years before the show, ten years. The now rare instances of  
22 desperate mothers using their kids for extra income wasn't the  
23 story that Real Sports wanted. But it was the real story.  
24 Real Sports was repeatedly told by Indian reporters working for  
25 them that the basic premise of the story in Jalandhar was

1 false.

2 Here is one of several memos from man Preet Kaur, Real  
3 Sports' field reporter and primary Indian journalist, telling  
4 that to the producers of the show. "As I have explained and  
5 mailed you earlier, there is no direct contact between company  
6 and children or between contractor and children. These balls  
7 are taken out by trusted contractors/trusted employees outside  
8 for stitching and are given to the parents of the children to  
9 stitch." "Parents/family members make children to stitch the  
10 balls." "Parents make their children stitchers due to the  
11 necessity of their house."

12 And you're going to see wads of these memos telling  
13 them that this is how kids wind up stitching soccer balls.

14 Mr. Perskie, who is the producer of the show, admitted  
15 that he knew kids stitched soccer balls in Jalandhar, not as  
16 the show claims because kids are hired or preferred but because  
17 parents hired to stitch the balls give some to their kids to  
18 stitch. You'll see his admission.

19 Bryant Gumbel also admitted that he was told about  
20 this central falsity in the show. And you'll see that  
21 admission as well.

22 In a 2006 memo from the associate producer of the  
23 show, Zehra Mamdani, to Mr. Perskie, Mr. Mamdani tells him "we  
24 can't really show abused kids because these kids are not being  
25 beaten by their 'masters'; they're being slapped by their



1 parents for not working." But she told him, "I think this  
2 story is doable if it's done in a clever way (which of course  
3 it will be since you're working on it)."

4 "I hope this information didn't deflate too much air  
5 from the story (ha ha) because we don't have the abused kids  
6 like the camels piece." "The camels piece" is a reference to  
7 another Real Sports segment.

8 Ladies and gentlemen, this was the moment, this was  
9 the moment, two years before the first telecast, when the  
10 producers confronted the truth but decided instead to be clever  
11 and make a hoax. And since they couldn't really show abused  
12 kids, as you see, the evidence will show, unfortunately, that  
13 Real Sports themselves abused and lied to kids. Most of what  
14 Real Sports called research over the next two years was a  
15 process of staging falsifications and lying to everyone,  
16 especially the children, resulting in Children of Industry and  
17 an effort at HBO to widely disseminate and publicize this show,  
18 an effort in which Richard Plepler, HBO's powerful president,  
19 took a very personal and active hand.

20 The sports story about Mitre not hiring adults because  
21 kids are cheaper at a nickel an hour was just a flat-out lie,  
22 constantly repeatedly Goldberg. The big lie is made up of  
23 component lies, like the one about not hiring adults because  
24 they unionized. Please watch Mr. Perskie admit that  
25 fabrication.

1 (Video recording played)

2 MR. CONSTANTINE: You also see Mr. Perskie's admission  
3 that the nickel-an-hour rate for ball stitching you heard about  
4 over and over again, that it had absolutely no basis in fact.

5 (Video recording played)

6 MR. CONSTANTINE: Perskie and Mamdani, the producer  
7 and the associate producer, both swore that it was their job to  
8 assure the show was factually accurate. But despite her duty  
9 to assure accuracy, Ms. Mamdani repeatedly also swore, under  
10 oath, that she didn't remember the most basic things about the  
11 show that she co-produced. Here is a preview of Ms. Mamdani's  
12 testimony.

13 (Video recording played)

14 MR. CONSTANTINE: The associate producer didn't know  
15 would wrote the script.

16 Next, please.

17 (Video recording played)

18 MR. CONSTANTINE: The associate producer -- this is  
19 the first show that she was an associate producer on, it was  
20 telecast 104 times and available on demand -- according to her,  
21 she doesn't recall ever actually watching the show.

22 Next, please.

23 (Video recording played)

24 MR. CONSTANTINE: That's Ms. Mamdani's handwriting, in  
25 her notebook.

1 Next, please.

2 (Video recording played)

3 MR. CONSTANTINE: Next, please.

4 (Video recording played)

5 MR. CONSTANTINE: She didn't remember, but I want you,  
6 ladies and gentlemen, to please remember Ms. Mamdani's  
7 testimony about not searching for the saddest children and not  
8 staging anything, as you watch this scene, where Ms. Mamdani  
9 asks Poojah, that beautiful little girl I showed you before,  
10 the sister of Prakash, expose herself and her disease,  
11 stitching for an HBO cameraman, Vijay Bedi, at Ms. Mamdani's  
12 request.

13 (Video recording played)

14 MR. CONSTANTINE: I'm sorry I actually had to show  
15 that to you, but you have to understand what went on here.

16 When I showed Ms. Mamdani 19 separate handwritten  
17 notes of per-ball rates paid to stitchers in Jalandhar, in her  
18 handwriting, in her notebook, she didn't recall writing that or  
19 the meaning of any of that, because it puts a lie to the  
20 nickel-an-hour fabrication and it showed why there was  
21 absolutely no economic incentive for soccer-ball manufacturers  
22 to use child labor. The piece rate or per-ball rate is the  
23 same regardless who stitches a ball. And remember, Mitre  
24 doesn't make the ball.

25 The real picture in Jalandhar, as with hundreds of

1 cottage industries, is that kids are given work by their  
2 parents. Why? In an effort to survive, in India. Real Sports  
3 knew that. Their Indian researcher told them this repeatedly.  
4 But in Jalandhar, SGFI is helping the family to survive without  
5 using their children as labor, by providing vocational  
6 assistance and economic assistance. This has steadily and  
7 drastically reduced the incidence of child labor in Jalandhar.

8 In 2007 and 2008, two years, a decade after the  
9 program confronted widespread child labor, SGFI made more than  
10 24,000 unannounced visits to 3,000 stitching homes in  
11 Jalandhar, with SGFI plates nailed to their doors. And in just  
12 60 homes in two years, kids were found stitching soccer balls.  
13 And of those 60 homes, in nine, the kids were found stitching  
14 Mitre-brand soccer balls. Nine cases in two years. You know,  
15 a zero-tolerance policy does not mean that something you don't  
16 tolerate and fight hard to stop never happens. The kids found  
17 stitching were sent to special schools operated by SGFI.  
18 Financial assistance and training was given to their parents.  
19 And that 60 and nine in two years, that's how drastically the  
20 incidence of child stitching has been reduced as a result of  
21 the effort in the Punjab that this gentleman, Stephen Rubin,  
22 Mitre's owner, began more than a decade before this show was  
23 telecast. Indeed, Mr. Satyarthi recorded the results of this  
24 effort to Mr. Goldberg, but it was simply ignored.

25 (Video recording played)

1 MR. CONSTANTINE: "Decreasing very fast and it's going  
2 to end soon," the contrast with the mid '90s. And what  
3 changed? This guy. That's what changed.

4 Real Sports knew all this. Newsreels of this effort  
5 featuring Mr. Rubin are prominent in the raw, unused footage  
6 that Real Sports left on their cutting room floor. Instead,  
7 Real Sports just made up the story about Mitre, that doesn't  
8 even manufacture balls, liking to hire kids to stitch them at a  
9 nickel an hour, instead of their parents. Not the truth. Not  
10 substantially true. Just lies. And lies formulated in a  
11 grossly irresponsible and reckless manner, while the truth was  
12 staring Real Sports right in the face.

13 Ms. Mamdani interviewed SGFI executive director Ravi  
14 Purewal. That's Mr. Purewal. You'll see his testimony here in  
15 the trial. Mr. Purewal provided Mamdani extensive information  
16 about SGFI's child-labor monitoring and rehabilitation  
17 programs, at her request. With SGFI's help, Real Sports could  
18 have shown real stitching families and real kids stitching,  
19 instead of the staged phony scenes that you saw, and show what  
20 the industry in Jalandhar is doing to stop child labor and help  
21 the families. Mr. Purewal will testify. Instead of finding  
22 and showing the very few real kids stitching next to their  
23 mothers, like little Poojah, like little Pantah, who actually  
24 didn't know how to stitch. Real Sports hired kids to pretend  
25 that they were stitching balls in Jalandhar. They brought

1 materials to the kids. They doctored the ball panels with big  
2 enlarged holes to make the kids look skilled, and they told the  
3 kids what to do, just like they staged and were teaching that  
4 little boy Pankash, that I showed you before.

5 You may recall that Bernard Goldberg in the show  
6 refers to the holes on the unstitched panels of a soccer ball  
7 as "pin-sized holes." I'm glad there's a lot of women on the  
8 jury who know what pin-sized holes are. OK.

9 (Video recording played)

10 MR. CONSTANTINE: You'll see the testimony of the  
11 soccer ball maker from Jalandhar about these doctored ball  
12 panels with enlarged holes. Pin-sized holes? Maybe bowling  
13 pins.

14 Ladies and gentlemen, as the evidence is presented,  
15 please pay careful attention to the size of the holes described  
16 by Mr. Goldberg as pin sized and the many other details that  
17 will allow you -- as the Judge told you, you are the judges of  
18 the fact -- to determine, as Mitre contends, that these scenes  
19 were all staged. And HBO is very good at that. They make good  
20 movies.

21 Real Sports had the names and logos of many other  
22 soccer brands that the producers swore under oath were being  
23 stitched by kids in Jalandhar. They swore that they saw the  
24 Boyce brand and McGregor and Dunlop, and Adidas balls labeled  
25 "Euro 2008," which was the biggest tournament that year. Real

1 Sports documents also refer to kids stitching Niki, Puma,  
2 Spalding, and Umbro Ball. Real Sports even had footage, they  
3 say, of balls being stitched by kids with the Pepsi brand on  
4 it, as well as the signature of Ronaldinho, a soccer megastar.  
5 That was the ball, when you watch the show, that was the ball  
6 that bore the inscription "child-labor free," the one, as you  
7 will learn, many who watched this show concluded was a  
8 Mitre-brand ball. You remember when I asked you that question  
9 at the beginning, when I said, ask yourself right now, maybe  
10 some of you thought that now.

11 Here is what you saw when you watched the show at  
12 Children of Industry, with the Pepsi brand and Ronaldinho's  
13 signature.

14 (Audio recording played)

15 MR. CONSTANTINE: And here is the Pepsi branding and  
16 Ronaldinho's signature from an early version of the show that  
17 was edited out before it was telecast.

18 (Video recording played)

19 MR. CONSTANTINE: Real Sports hid that scene.  
20 Ronaldinho's signature, it was a target and lie about Mitre,  
21 and Mitre alone, that has never, ever labeled its balls that  
22 way. Never. Every kid named by Real Sports as a child  
23 stitching a Mitre-brand ball was identified by SGFI, and swore,  
24 under oath, that they were not stitchers but were induced by  
25 Real Sports to pretend. These three kids, named Manjit, Deepu,

1 and Aman -- you saw them in the show -- are all portrayed as  
2 stitching Mitre-brand balls. They and the other kids will  
3 testify that they were induced by Real Sport to pretend to be  
4 stitchers, with those doctored ball panels, etc.

5 (Video recording played)

6 MR. CONSTANTINE: You'll see their full testimony at  
7 trial. You'll see a lot of other kids saying the same thing  
8 that, they were induced to pretend. These two classes of kids,  
9 one of the kids that was sort of sporting in the beginning a  
10 mustache, they're referred to as middle-class kids. Anyway,  
11 you will see their extended testimony about the products and  
12 the instruction Real Sports provided to them. You'll see the  
13 attorneys that were hired by them in HBO to try to intimidate  
14 these kids, like Manjit, that girl you saw before, who was  
15 accused by one of these shouting attorneys of being a Bollywood  
16 actress.

17 You know, unless and until extreme poverty ends in  
18 India, there are going to be some child stitchers, in  
19 Jalandhar, stitching at home, along with their mothers.  
20 Showing that would have required Real Sports to abandon the lie  
21 about Mitre hiring kids instead of their parents, and it would  
22 have prevented Bernard Goldberg from playing hero.

23 (Video recording played)

24 MR. CONSTANTINE: The false story about Jalandhar  
25 gives all the fakery that they used in that first video of



1 Meerut, plus more. Nobel Laureate Satyarthi's comments were  
2 scattered throughout the Jalandhar portion, but when I took his  
3 testimony in India, he stated that he didn't go Jalandhar with  
4 HBO, he didn't even know -- he didn't even know -- that the  
5 show involved Jalandhar. He is based in Meerut. His  
6 organization is in Meerut. He didn't know the show involved  
7 Jalandhar. And he had, quote, never been to Jalandhar in this  
8 particular or in any investigation with anyone.

9 (Video recording played)

10 MR. CONSTANTINE: Quite a deal to use a man like  
11 Satyarthi as a foil for a lie that you want to tell.

12 This is Charlotte Ponticelli. Charlotte Ponticelli  
13 was the highest U.S. official fighting child labor. She was  
14 also unwittingly assigned the role of bungling U.S. government  
15 official. This dedicated and sophisticated career public  
16 servant was duped and manipulated into a gotcha moment, and  
17 everything she told Mamdani about our government's great and  
18 very expensive effort to reduce child labor were edited out.  
19 She'll testify, you'll see that Real Sports deceived her, they  
20 deceived her, into believing that that Ronaldinho ball that I  
21 showed you, she thought that was a Mitre ball.

22 The show's lies fooled not only Satyarthi and  
23 Ponticelli, but correspondent Bernhard Goldman was fooled by  
24 his own show and by his own words into believing that Mitre  
25 labeled its soccer balls "child-labor free," something it has

1 never done, because it doesn't use its corporate responsibility  
2 policies to advertise.

3 Please watch and listen to Goldberg.

4 (Video recording played)

5 MR. CONSTANTINE: But since the only brand shown and  
6 mentioned is Mitre, it is not surprising that Goldberg deceived  
7 himself. And you'll see that at the trial. The evidence will  
8 show why the correspondence who constantly proclaimed his and  
9 Real Sports' heroism was substantially clueless about his own  
10 show, despite telling the viewers, quote, we found it, and "our  
11 trip to Meerut" and many other "we"s and "our"s. Goldberg  
12 never went to India for this show.

13 Goldberg interviewed Satyarthi in an Indian-themed  
14 hotel in London to make it appear that he had gone to India.  
15 Goldberg never even bothered, never even bothered to watch the  
16 show that he pontificates about with Bryant Gumbel at the end,  
17 in the crosstalk. Here is Mr. Goldberg admitting that he  
18 didn't watch his own show, with Bryant Gumbel, and he didn't  
19 even watch the show without him.

20 (Video recording played)

21 MR. CONSTANTINE: Remember what his Honor said about  
22 demeanor evidence.

23 During the trial you'll see all the basic things about  
24 his show that Mr. Goldberg didn't know. He admitted he didn't  
25 know why he wrote, why he wrote to producer Perskie that the

1 description was, quote, unfair to Wal-Mart and Mitre. And  
2 Mr. Perskie testified that he didn't know why Goldberg's false  
3 description was unfair to Mitre either. Mr. Goldberg also  
4 didn't understand the phony emancipation scene in the show  
5 involving these two girls, Sonia and Sonam of Meerut. As you  
6 watched before, these two girls have supposedly been freed from  
7 slavery by Kailash Satyarthi and are the newest students in  
8 their school. You heard that, right. You also saw them  
9 receive their, quote, very own emancipation proclamation, in  
10 that scene involving a staged and nonexistent court decree.  
11 But during the trial you'll see, these girls were not bonded  
12 laborers and they were not being freed. They were simply  
13 brought to Mr. Satyarthi by HBO for a photo op on May 16, 2008.  
14 The supposed court decree freeing them were just birth  
15 certificates. They are enrolled in an exclusive private  
16 institution that just want middle schools, not in their village  
17 school, as it was said, which is in the Nai Basti Village of  
18 Meerut. And to finish this little hoax within a big hoax, they  
19 were dragged back in front of HBO cameras in late August of  
20 2008 and they were pulled out of a play date and HBO made them  
21 cry.

22 In this document, associate producer Mamdani asks  
23 Children of Industry field reporter Manpreet Kaur why Sonia is  
24 crying, and she's told that Sonia was crying because HBO took  
25 her away from a play date with her sister for an HBO shooting

1 session. "Dear ma'am, Sonia was crying as she was a bit  
2 hesitated to answer our questions. And she was disturbed  
3 because she went to her sister's place (to enjoy), and we  
4 brought back to her house for filming. This was also the  
5 reason for filming in the evening, as a lot of time was wasted  
6 in explaining her and bringing her back to her house. And the  
7 second reason is the weather was cloudy. Thanks, Manpreet."

8 And now I'll show you a one-minute clip from a much  
9 longer filming session with Sonia where three HBO stringers  
10 pummeled Sonia with directions and questions, which you'll see  
11 during the trial translated as, "Say loudly, say, Sonia, look  
12 at me, listen, you speak from the beginning, Sonia, you tell  
13 the whole thing about yourself, tell everything. My name is  
14 Sonia. I study in this class. I live in this village. And I  
15 am so many years old. Say this all in one line. Just say it.  
16 Say it. Speak, Sonia. Speak. Nothing will happen. Speak."

17 (Video recording played)

18 MR. CONSTANTINE: You're going to see this over and  
19 over again, of all these kids being pounded and staged and say  
20 this again, say this again, say this again. The call  
21 Ms. Mamdani swore that staging and direction did not occur.  
22 You saw that before.

23 And when Mr. Goldberg, the clueless correspondent, saw  
24 a reference to this scene -- you know, the emancipation  
25 scene -- in a draft version of the script, he complained to

1 Mr. Perskie: "Joe, a/k/a motherfucker, I still don't understand  
2 the ID paperwork bullshit. Can you write this in fucking  
3 English also?"

4 HBO really cares about these kids. And Goldberg  
5 further demonstrated his deep concern for them in his comments  
6 about a planned scene showing kids playing with the soccer  
7 balls they used to stitch. You recall, you saw the show,  
8 Satyarthi says, these children have dreams to play with that  
9 soccer ball which they stitched, but they can never. They can  
10 never." Well, that feel-good scene was deleted from the show  
11 after Goldberg threatened Perskie. "Joe, this is so fucking  
12 corny I can't stand it. I'll do part one. Get someone else to  
13 read part two. Please."

14 Mr. Goldberger confirmed -- and I you know, and I  
15 should tell you something. Mr. Goldberg was totally  
16 unconcerned about the content of the show or anything about the  
17 facts of the show. When he was deposed, I said, you know, you  
18 said there were ten international brands, can you name them.  
19 He said, I can name one, Pepsi. So he was totally unconcerned  
20 about the content of the show, the truthfulness of the show,  
21 the fact of the show. But one thing that he was concerned  
22 about was diction, grammar, and things that he thought were  
23 "too fucking corny."

24 The only other thing that he was concerned about is,  
25 he wrote to Mr. Perskie that it was unfair to Wal-Mart and

1 Mitre. But he forgot about what he meant there.

2 Mr. Gumbel confirmed that the very format of the  
3 crosstalk at the end is a hoax. Gumbel and Goldberg, seated  
4 together for brief seconds inside the mind of Gurmeet Kumar.  
5 Just look at them. Isn't that a magic HBO moment, the kind of  
6 moment that only HBO can create? Just look at that.

7 Then after that magical moment, Gumbel and Goldberg  
8 tell viewers their interpretation of the show that they and the  
9 viewers just watched together, etc. Gumbel and Goldberg  
10 haven't watched the show together. And incredibly, they  
11 haven't even watched the show separately. Here is Mr. Gumbel's  
12 admission, matching the one you saw Mr. Goldberg make before.

13 (Video recording played)

14 MR. CONSTANTINE: And as you will see, Mr. Gumbel's  
15 confession went well beyond that, but for now please consider  
16 that Mr. Gumbel declared Mitre guilty and a lying or lousy  
17 investigator in the crosstalk.

18 (Video recording played)

19 MR. CONSTANTINE: He rendered that verdict without  
20 even knowing whether Mitre soccer balls are made in India.

21 (Video recording played)

22 MR. CONSTANTINE: This was a show about soccer ball  
23 stitching in India. The host didn't know where the Mitre  
24 soccer balls were manufactured.

25 Gumbel didn't go to India. Goldberg didn't go. The

1 producer, Mr. Perskie, was not present when any of the India  
2 footage was shown, not one image. Associate producer Mamdani  
3 was the only HBO employee present when any of the India footage  
4 was shown. But she was in Meerut, where Mitre soccer balls  
5 have never been made, orchestrating Real Sports' complete  
6 fabrication of the truly tragic events in the life of Gurmeet  
7 Kumar and her baby brother, Rishi, who died.

8 Judge Daniels will explain to you what gross  
9 irresponsibility means as it is applied to trust, or what it  
10 means to recklessly disregard the truth and what practices are  
11 malicious in this kind of case. But you, the judges of the  
12 facts, will be able to determine that, with no presence of HBO  
13 employees in India, most of the work was done by what Real  
14 Sports called their "stringers," the Indian reporters that they  
15 hired. You'll see their testimony. Producer Perskie testified  
16 that they were professional, accomplished, responsible  
17 journalists. This lady is Veena Sharma. She testified  
18 repeatedly that she never saw a single child under the legal  
19 age of 14 stitching a soccer ball.

20 (Video recording played)

21 MR. CONSTANTINE: And you'll see Sumit Khanna.  
22 Mr. Khanna walked out in the middle of his deposition, said,  
23 right now I'm very tired because everything has slipped from my  
24 mind, came back nine days later and testified that he shot a  
25 lot of footage without any HBO employee present, and that

1 everything he shot was rejected by Ms. Mamdani, everything.

2 This gentleman is Yatish Yadav, another Real Sports  
3 stringer. Like Mr. Perskie, Mr. Yadav was not present when any  
4 of the footage used by Children of Industry was shot, not one  
5 image.

6 And this, ladies and gentlemen, that is Vijay Bedi,  
7 another among Real Sports' professional, accomplished,  
8 responsible journalists, according to Mr. Perskie. Mr. Bedi  
9 swore under oath that he was just doing camera work under the  
10 supervision of HBO. He's the guy who provided Poojah exposing  
11 herself and her diseased, ravaged chest, at Ms. Mamdani's  
12 request. Please watch carefully this scene that Mr. Bedi  
13 directed and photographed for six full minutes, three weeks  
14 before Ramit Kumar's brother died.

15 (Video recording played)

16 MR. CONSTANTINE: I'm sorry. I apologize for having  
17 to show that to you.

18 Ms. Mamdani and Mr. Perskie testified that they  
19 reviewed all of the raw footage of the Gurmeet Kumar family  
20 shot in their home, before selecting images, and the sound  
21 bites that you saw before in the show. After doing that, the  
22 script of the show reports "three weeks after we met him,  
23 Gurmeet's baby brother died. Gurmeet got three hours off to go  
24 to the funeral. Then it was back to work. After all, his  
25 death still very much alive." Clever.



1           This gentleman is Real Sports stringer Harinder Singh.  
2           Mr. Singh will testify that he helped Real Sports set up  
3           David's shoot days in advance despite Mamdani's testimony that  
4           HBO's family simply photographed what people were doing without  
5           any staging or direction. Mr. King testified that he did not  
6           know whether the stitchers were adult or children, that Real  
7           Sports refused his suggestion to get proof of age. He also  
8           testified that he wasn't sure whether rugby balls or soccer  
9           balls or something else was being stitched. Mr. Singh also  
10          testified about scenes of children in industry that were  
11          dramatized and fabricated. Here's one of the scenes in  
12          children of city that Mr. Singh swore was dramatized and  
13          fabricated, scenarios shot where no faces can be seen.

14                 (Video recording played)

15           MR. CONSTANTINE: The younger kid appearing in  
16          Children of Industry whose name and address was disclosed and  
17          even some of the raw unused footage that wasn't used in the  
18          show was located by SGFI, because that's what they do. They  
19          find kids and they help them and their family. They swore that  
20          they were not stitchers but were induced to act in this Real  
21          Sports show. You'll see their testimony. But here, the  
22          faceless stitchers, who appear skilled, were not identified,  
23          preventing Mitre and SGFI from helping and finding them if they  
24          actually needed help. The raw footage reveals that these  
25          stitchers, described by Goldberg as "not much older than ten"

1 in fact include one stitcher that is 31 years of age, and  
2 others that are 19 years of age. As they told Real Sports  
3 stringer Vijay Bedi as he filmed them, you'll see the evidence.

4 And the scene was further fabricated because Real  
5 Sports provided these skilled stitchers Mitre ball panels to  
6 stitch. From the raw unused footage provided to Mitre, here  
7 are the faces of the people that Goldberg said were, quote, not  
8 much older than ten.

9 and here are the neatly laid-out Mitre ball panels  
10 brought to this location. Yes, unique they are. And here are  
11 the rugby balls that were actually stitched at that location.  
12 You didn't see that in the film, did you? Never shown to the  
13 viewers, but found in the Real Sports scrapheap.

14 Now, I've deconstructed several of these scenes for  
15 you. I deconstructed this scene. I showed you how the  
16 emancipation farce was done. I showed you how Pankash was  
17 portrayed as a stitcher when, you'll see during the trial was  
18 actually pulling the thread with his teeth, sticking it in his  
19 nose, etc. I've deconstructed these scenes. I can't do that  
20 with everything that you saw in the show. And you're going to  
21 be inundated during this trial with scenes of kids purportedly  
22 stitching soccer balls.

23 And you know what, kids actually do stitch soccer  
24 balls, you know. Certainly in Meerut they do, where Mitre  
25 balls are not made. But what I'm telling you is that during

1 the course of the trial all of this will be deconstructed for  
2 you. A lot of what you're going to be inundated with are  
3 scenes from Meerut, where Mitre has never been. Others are  
4 going to be involving older kids who look young. Some of these  
5 are kids who can stitch but they were provided to Mitre stuff  
6 just like this scene here. And there are going to be lots of  
7 falsified scenes like Manjit and Deepu and Aman and Preeti and  
8 Sabitah. So you'll see all of their testimony. You'll even  
9 see a kid stitching something called a netball, where is a game  
10 virtually unknown in the United States. This kid is 12. And  
11 you will see the testimony, that he was a 12-year-old. He goes  
12 to school full time. He comes home and he stitches soccer  
13 balls. He stitches netballs a couple of hours a day. And that  
14 is lawful in India because if you're going to school full time  
15 you can do that. And you'll see that.

16 You'll not only see that, but you will see that the  
17 producers found that out from an expert named Dr. Helen Seekar  
18 at a university in Delhi. But, you know, they just threw that  
19 information away.

20 So I can't do all of that in the opening. But during  
21 the course of the trial, you will see this whole hoax  
22 deconstructed.

23 Up to this point I focused on this show, the false  
24 story in Meerut, the separate false story involving the very,  
25 very different industry and different company in Jalandhar, and

1 the grossly irresponsible and reckless way that these lies were  
2 concocted, with the truth staring Real Sports right in the  
3 face.

4 Now I'm going to tell you a little bit more about  
5 Mitre, as I promised, the company that was lied about and  
6 savaged repeatedly, exclusively in this hoax, a hoax on Mitre  
7 and a hoax on the American public.

8 As current and former executive, Mr. Rubin will  
9 testify. Mitre was the seventh largest soccer brand in the  
10 world, behind Niki, Adidas, Puma, Umbro, and others. Mitre is  
11 one brand of some 13 brands. And I mentioned seven of them  
12 before. They are owned by Pentland, which is a family-owned  
13 company established 80 years ago as Liverpool Shoe. Mitre-  
14 brand soccer balls have never been manufactured in Meerut, not  
15 one. Never. The place where Real Sports depicted Mitre as  
16 slave masters and the company responsible for that tragedy in  
17 Gurmeet Kumar's family.

18 Mitre and Pentland are not the liars and lousy  
19 investigators that Bryant Gumbel accused them of being without  
20 even knowing where their balls are made. Mitre has never  
21 claimed that child labor does not exist in Jalandhar. In fact,  
22 before the show was telecast, Mitre sent Real Sports a letter  
23 telling them that they were completely aware and completely  
24 involved with the SGFI program to find the very few kids still  
25 stitching soccer balls. Real Sports also got a statement

1 before the telecast from SGFI to distinguish that. There were  
2 so many moments where they looked the truth in the face and  
3 said, you know what, let's be clever.

4 Pentland bought Mitre in 1995. Child labor was very  
5 common in the soccer ball industry in the Punjab. 75 percent  
6 of the world's soccer balls were made there. The moment, the  
7 very moment that this gentleman bought Mitre, he and his son,  
8 Andy Rubin, went into action to address the problem of child  
9 labor in the Punjab. That year, '95, Mr. Rubin was made  
10 president of a worldwide federation of sporting goods  
11 companies, 12,000 companies, that includes every major sports  
12 equipment brand in the world. They elected him to that  
13 position. His very first act as federation president was to  
14 convene a conference in Switzerland devoted to the eradication  
15 of child labor, attended by all of the big brands in the world:  
16 Unicef, the International Olympic Committee, Save the Children,  
17 and Anti-slavery International, which is the oldest human  
18 rights organization on the planet.

19 The next year, Mr. Rubin hired Lesley Roberts, the  
20 head of Anti-slavery International, to head Mitre's corporate  
21 responsibility department. You'll see her testimony. She is a  
22 world-renowned authority on slavery in childhood. She'll  
23 testify about what it meant for Pentland to give a blank check  
24 to an activist like her. Mr. Satyarthi will testify about his  
25 collaboration on these initiatives, and recognitions of

1 Mitre's, quote, leading corporate social responsibility policy.

2 (Video recording played)

3 MR. CONSTANTINE: 1997, a meeting that Mr. Rubin held  
4 in Switzerland called the Atlanta agreement, which was all of  
5 the soccer ball makers in Sialkot, again, where 75 percent of  
6 the world's soccer balls are made, resulting in the substantial  
7 elimination of child labor from the huge stitching industry  
8 there. Mitre was not a manufacturer, but it was heavily  
9 involved in establishing those procedures in that town. Here's  
10 a clip from Mr. Rubin's address at that Atlanta meeting. You  
11 know where we found the clip? It was in HBO's file.

12 (Video recording played)

13 MR. CONSTANTINE: This is HBO footage.

14 This is why we're here, ladies and gentlemen, because  
15 they told all those lies about this man and his company. 1997.  
16 And the very next year, 1998, Mitre helped establish the SGFI,  
17 in Jalandhar, a hundred miles away, as you will see and hear  
18 from Ms. Roberts, from Mr. Rubin, from Andy Rubin, and from  
19 Mr. Satyarthi himself, who praised the anti-child-labor efforts  
20 in both Sialkot and Jalandhar.

21 Stephen and Andy Rubin will also testify about the  
22 mandate given to Ms. Robert, whom you saw before, really an  
23 unreasonable woman in the best sense of the word -- a woman who  
24 always saw every problem under the sun, a woman who was never  
25 satisfied, no matter how much progress was made, and never

1 could be satisfied. That's why Stephen Rubin hired her.

2 Under Roberts and the Rubins' leadership, Mitre's  
3 corporate responsibility and supply chain executives  
4 relentlessly inspect supply facilities India and all around the  
5 world, fighting the pandemic of child labor and providing the  
6 workers living wages so that parents don't have to sacrifice  
7 their children's future. When a violation of their policy  
8 occurs, they don't jump ship and leave the community; they work  
9 to address it. That investment by Mitre and Pentman to the  
10 community governs their dealings in Jalandhar and everywhere  
11 around the world where their branded products are made by other  
12 companies.

13 You know, it was really disgusting and particularly  
14 perverse, particularly perverse, for Real Sports to have  
15 singularly targeted Mitre and this man, because it has really  
16 walked the walk in eliminating child labor from this industry  
17 and other industries, which still occurs, though very rarely,  
18 because of extreme poverty, not because of evil soccer brands  
19 or evil soccer manufacturers or subcontractors or  
20 contractors -- by the way, none of which are ever named in the  
21 show, leaving the viewer only one name, one brand, to blame for  
22 everything: Mitre.

23 (Continued on next page)  
24  
25

1 MR. CONSTANTINE: In Meerut, where Real Sports  
2 portrayed Mitre as slave masters, the simple truth that the  
3 producers knew, as you saw, Mitre soccer balls are not made  
4 there and never have been.

5 The devastating effect and damage suffered by  
6 family-owned Mitre will be detailed by many witnesses. Because  
7 the Rubins are Englishmen, I think I have the right to sort of  
8 paraphrase Shakespeare now, about what happens when a wonderful  
9 reputation, a hard-earned reputation is damaged by lies.

10 Shakespeare said something like: "Who steals my purse steals  
11 trash, but he that taketh from me my good name robs me of that  
12 which not enriches him, but makes me poor indeed."

13 You know, I respect my distinguished adversary, but I  
14 am not going to wish him good luck in trying to rationalize and  
15 excuse how Mitre was lied about exclusively, recklessly and  
16 intentionally.

17 This trial involves a sport, soccer, but this is not a  
18 sporting event. It's a search for the truth and for a just  
19 result. So that companies like Mitre, that put their money  
20 where their mouth is, won't be lied about, and so the American  
21 public can trust news programming and won't be lied to and  
22 manipulated about a serious problem. Because when you do that,  
23 you do great damage to the effort to solve that problem.

24 Please remember this when my adversary tries to spin  
25 the very end of the show, when Mr. Goldberg clumsily speculates



1 that Mitre might have wanted to stop, but that Mitre's  
2 subcontractors are evildoers, who hire kids instead of adults,  
3 a lie, because they make a nickel an hour, another lie, and  
4 because they won't unionize and strike, another lie. Followed  
5 by Mr. Gumbel's reindictment of Mitre, he has already declared  
6 guilty, and lying and lousy investigators. Please remember  
7 that if Mr. Butswinkas tells you that Mitre was treated fairly  
8 because of Mr. Goldberg's final half-assed expression of doubt,  
9 laced with falsehood and his glaring Freudian slip. You heard  
10 him say, every single one of those kids working could be thrown  
11 out of work today and hired by a parent.

12 (Videotape played)

13 MR. CONSTANTINE: Mr. Goldberg didn't know much. He  
14 didn't go to India. He didn't even watch his own show. But  
15 that much he did know. He knew who was making these poor kids  
16 work. Their poor parents, not Mitre.

17 Before I take my seat, please remember what you saw  
18 and understood about this show before I began talking, and  
19 please remember now, and more importantly a few weeks from now,  
20 what your answers are to the questions I asked. What brand of  
21 ball you thought Gurmeet Kumar, the boy in Meerut, was  
22 stitching? The one who was sold into slavery for less than a  
23 hundred dollars. The one whose baby brother Rishi, who was  
24 never given a name on the show, the one who died, what brand of  
25 ball was given to Rishi? What brand of ball was labeled "child

1 labor free" as you watched this video? What brand of ball was  
2 associated with every despicable practice invented and staged  
3 by HBO in this farce?

4 Please remember what your answers to those questions  
5 were before I began reviewing the evidence. And when the trial  
6 concludes you will add your answer to a fourth question: Did  
7 Children of Industry report the truth or was it just a clever  
8 pack of lies targeting Mitre?

9 The viewers who watched this in 2008, they didn't have  
10 lawyers like me or Mr. Butswinkas to review the evidence. All  
11 they had was the show. This is what they saw, this is what  
12 they heard, and this is what they remembered.

13 (Videotape played)

14 MR. CONSTANTINE: Clever.

15 Thank you.

16 THE COURT: Mr. Butswinkas, I can do one of two  
17 things. I can give the jury a short five-minute break and you  
18 can take ten minutes and begin today or we can adjourn and  
19 begin in the morning.

20 MR. BUTSWINKAS: Option one, your Honor.

21 THE COURT: Why don't we do this. I am going to give  
22 you a short break in the jury room. Just stay in the jury  
23 room. Use the bathroom and rest yourself for a minute. I will  
24 bring you back out. We will take ten minutes, keep us on  
25 schedule. Then we will adjourn for the day.

1 Don't discuss the case, keep an open mind, and I will  
2 see you in five minutes.

3 (Jury exits courtroom)

4 (Recess)

5 (Jury present)

6 THE COURT: Mr. Butswinkas, why don't you begin for  
7 ten minutes.

8 MR. BUTSWINKAS: Thank you, your Honor.

9 May it please the Court, ladies and gentlemen.

10 I tell my two boys more often than they want to hear  
11 that actions speak louder than words. And I want you to  
12 remember what Mr. Constantine said in his last five minutes.  
13 Mitre relentlessly inspects to make sure children are not  
14 stitching soccer balls in their supply chain.

15 This story ran on September 16, 2008. And after the  
16 report ran, HBO received a letter from Mr. Constantine. And in  
17 that letter, he said, children were not stitching Mitre soccer  
18 balls in Jalandhar, India. And I waited for the better part of  
19 an hour and 35 minutes to see if he would repeat that, whether  
20 he would tell you again that children were not stitching Mitre  
21 soccer balls in Jalandhar, India. And it never came. He never  
22 said it. And you will know why after you hear the case, after  
23 the evidence comes in. Not from what the lawyers say, not from  
24 what the lawyers play, not from the lawyers' edits, but from  
25 the evidence.

1           Because what happened after they saw the HBO report  
2           was Mitre sent one of its three investigators that it had on  
3           full-time staff at Pentland. By the way, those are three  
4           investigators. They don't deal with child labor at all; they  
5           are over in the counterfeiting side, because that's the side  
6           that costs Mitre money. But when this report ran, they pulled  
7           one of those guys off, who spent 80 percent of his time on  
8           counterfeiting, and they said, sir, go over to Jalandhar and  
9           see what you find. See if you can find the same thing HBO  
10          found in the report. Were kids stitching Mitre soccer balls in  
11          Jalandhar, India?

12           A gentleman with 31 years of experience, used to be a  
13          policeman, and just like Mr. Goldberg said, and just like HBO,  
14          when he went over there, he didn't have subpoena power, and he  
15          didn't have guns, and he didn't have a badge. But you know  
16          what he found? You know what he found? The evidence will show  
17          he found exactly what HBO reported in their report. Kids  
18          stitching Mitre soccer balls in Jalandhar India. From the same  
19          time period as the report, 2007 and 2008.

20           Ironically, he even found evidence of a little child  
21          stitching a Mitre soccer ball on September 16, 2008, the very  
22          date of the report, a little girl named Dembell. And he was  
23          pretty hamstrung by what he could actually look for. He didn't  
24          really do a full-scale investigation. He didn't even speak the  
25          language of the country to do that. He found that evidence by

1 pulling open a file drawer. That's all it took.

2 Before that time, before the report, there had never  
3 been a single document in Mitre's files discussing, looking to  
4 see if there were children stitching their soccer balls in  
5 Jalandhar, India. Not a report, not an e-mail, nothing. You  
6 know why? Because they never even asked for those reports  
7 until after the report ran.

8 And after they found the same thing that HBO found,  
9 children stitching Mitre soccer balls in Jalandhar, India, they  
10 didn't send out a corrective press report to say, well, you  
11 know, we did find some kids stitching our soccer balls. And  
12 they didn't send a letter back to HBO saying, oops, our bad.  
13 Nothing.

14 Let me tell you what they did instead. When HBO was  
15 going to do this report, they had hoped to get Mitre to be  
16 interviewed on camera, to answer questions about the report, so  
17 they can include it on their televised report. They declined.

18 HBO went a step further and sent still shots of some  
19 of the kids that it had found stitching Mitre soccer balls in  
20 Jalandhar, India over to Mitre: A little girl named Preeti, 7  
21 years old. Her sister Savita, 10 years old.

22 The next day the Mitre machine kicked into action.  
23 They sent those still shots of those children to the so-called  
24 monitoring organization they talked about, the SGFI. And those  
25 folks showed up at the family of Preeti and Savita. They live

1 in a two-room house, a kitchen and a room that's 10 by 12. You  
2 know who showed up? Six men showed up at their house to stomp  
3 out child labor, and stomp it out they did. Three came from  
4 SGFI, the so-called monitoring organization. Two from Mare &  
5 Company, Mitre's manufacturer, and one from the subcontractor  
6 in the area. And this was a family living in the very poor  
7 part of a village in Jalandhar from the map that Mr.  
8 Constantine showed you.

9 And Mr. Satyarthi, who you heard in the report and who  
10 Mr. Constantine spoke very highly of during his opening, a  
11 Nobel Prize winner who has spent his entire life devoted to  
12 dealing with child labor in India, who was interviewed  
13 countless times, not just in the snippets that Mr. Constantine  
14 played you, not in his illusive editing of what Mr. Satyarthi  
15 said.

16 Let me tell you two things that Mr. Satyarthi said  
17 that I think will ring true with you. He said, the people in  
18 this industry, the soccer industry, over there in Jalandhar and  
19 Meerut, they are very, very strong people, connected people,  
20 powerful people. He compared them to the mafia. And he said  
21 the children there and the parents there are kept in fear. And  
22 what we know from some of these parents testifying is they  
23 believed it was illegal if their children were caught  
24 stitching, and they believed that the parents could go to jail  
25 if they were caught.

1           After these six men visited the home of Preeti and  
2           Savita, they sent a little video back to HBO as dispositive  
3           proof that kids in Jalandhar, India were not stitching Mitre  
4           soccer balls.

5           Let me contrast what we found and then what we were  
6           sent by Mitre. This is one of the girls stitching.

7           This is a little 7-year-old girl.

8           (Videotape played)

9           MR. BUTSWINKAS: I will show you her sister Tumara.  
10          Her sister is 10 years old, and she is stitching.

11          The allegation in this case is that these journalists,  
12          who have no experience in stitching soccer balls, showed up on  
13          the scene, ran around the villages of Jalandhar, and trained  
14          all these kids to stitch and then filmed it. And these six  
15          people showed up at Preeti and Savita's house. They made their  
16          own video.

17          Let me show you what that is.

18          (Videotape played)

19          MR. BUTSWINKAS: Your Honor, may I have two minutes?

20          THE COURT: Yes.

21          MR. BUTSWINKAS: Let me tell you what the evidence was  
22          after this video.

23          Well, Mrs. Singh, their mom, testified that they lived  
24          in a poor village, and it was a village known for soccer ball  
25          stitching. And that when those six men showed up, she didn't

1 want to go in the car with them, but she felt like she had to.  
2 And she thought that she had to cooperate. Otherwise, the  
3 factory that she worked in would close. And she said, whatever  
4 I was told, that is what I said.

5 And what they said was that what happened was somebody  
6 forcibly clicked the picture of the two daughters with a ball  
7 in their hand to make it look like they were stitching. They  
8 said that because they thought all HBO had was a picture of  
9 them, and not film. And they said, they stuck a ball in their  
10 hand and some needles and clicked the picture real quick to  
11 make it look like they were stitching. And yet there's minutes  
12 and minutes and minutes of these kids stitching.

13 Now, the mom is a soccer ball stitcher, and she does  
14 it every day, but three versions of the facts came out about  
15 that. And Savita, the young girl, said that, yeah, someone  
16 forcibly put a ball in her hand and they quickly clicked the  
17 picture. But there are minutes and minutes of actual footage  
18 of them actually stitching. And she admitted at her deposition  
19 that she didn't actually attend school, even though she is  
20 shown in a school uniform in a video. And she sat with long  
21 silences trying to explain how she could have a notebook with  
22 homework when she didn't even know how to sign her name.

23 Preeti, the other a little girl, said, the game that  
24 they say that they are playing in the video, they never even  
25 heard of. They never even played it.



1           These are the same folks that showed up at Deepuman's  
2 house and at Manjit's house, in a world where people depend on  
3 25 cents a ball for their livelihood. And you will see what  
4 they say, and it won't be me or Mr. Constantine who decides  
5 what the truth is. That is what is so great about the jury  
6 system. We have you all. You have no view before you get  
7 here. I am an advocate. He is an advocate. But we have you  
8 all to decide which side is the truth. And that's what this  
9 case is going to be.

10           Your Honor, that is a good place to break.

11           THE COURT: Ladies and gentlemen, we are going to  
12 adjourn for the day. I am going to ask you to be inside the  
13 jury room before 9:45. If we can get a good early start at  
14 that time, then I can keep us on schedule, and even try to keep  
15 us ahead of schedule.

16           So keep an open mind, don't discuss the case, and keep  
17 an open mind. I will see you tomorrow at 9:45.

18           (Jury exits courtroom)

19           THE COURT: Let's continue at 9:30 in case there are  
20 some issues that we have to address before the jury comes in.

21           See everyone tomorrow morning.

22           (Adjourned to April 14, 2015, at 9:30 a.m.)  
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